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ABSTRACT

This report is intended as a supplement to the final report (March, 1981) on the Select Commission on Immigration and Refugee Policy. Part one covers first principles of immigration reform with chapters on international cooperation, law enforcement policies and procedures, the characteristics and evolution of an open society, and the national interest as it pertains to leadership in world affairs, the enhancement of American cultural and language resources, and the growth of the economy. The impact of legal immigration is examined in part two with respect to the demographic, occupational, and sociocultural characteristics of the immigrants as well as the economic effects of immigration on the United States. Also discussed are the origins, operations, and future goals of the current immigration system with emphasis on admission criteria, exclusionary principles and the development of equitable standards of employment. Part three covers illegal immigration. Chapters are on the history of illegal migration, recommendations for stricter law enforcement (including employer sanctions), suggested procedures for dealing with undocumented immigrants residing in the United States (e.g., legalization), the issues surrounding the institution of a temporary worker program, and the past history and current law governing grounds for immigration exclusion. An extensive, selected bibliography is appended. (JCD)

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U.S. Immigration Policy and the National Interest

STAFF REPORT
of the
Select Commission on Immigration
and Refugee Policy
April 30, 1981

* * * AND NINE APPENDIX VOLUMES * * *

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UD 021 622

Supplement to the Final Report and Recommendations of the
Select Commission on Immigration and Refugee Policy

2

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OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY

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[*] Replaced the Honorable Reubin O'D. Askew on October 11, 1979.

[†] Public Law 95-412 stipulates that the Secretary of State, the Attorney General, the Secretary of Labor and the Secretary of Health and Human Services shall serve on the Select Commission on Immigration and Refugee Policy. The following were members of the Commission but did not participate in its deliberations:

Alexander M. Haig, Secretary of State
William French Smith, Attorney General
Raymond J. Donovan, Secretary of Labor
Richard S. Schweiker, Secretary of Health and Human Services

[‡] Replaced W. Griffin Bell on August 16, 1979.

[§] Replaced Joseph A. Califano, Jr. on August 3, 1979.

[//] Replaced Cyrus R. Vance on May 8, 1980.

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*Currently on staff or on staff for a minimum of six months. This does not apply to consultants.

[/] Replaced Drs. Jasso and Rosenzweig who returned to academic posts July 1980.

[≠] Replaced Ann Bartunek, August 1980.

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*Replaced Kitty I.S. Green

PREFACE

In 1979, the Select Commission on Immigration and Refugee Policy was created by Public Law 95-412 to study and evaluate existing laws, policies and procedures governing the admission of immigrants and refugees to the United States.

In compliance with its enabling legislation, the Commission submitted its Final Report to the President and Congress on March 1, 1981. This Staff Report is a companion volume to the official document, and is submitted to the Executive branch, the Congress and to interested members of the public to provide a background to the Commission's major recommendations and strategies and the procedures for implementing some of them.

FOREWORD

The Staff Report

This staff report and its accompanying appendixes provide additional background data and analysis to the recommendations made by the Select Commission on Immigration and Refugee Policy in its final report of March 1, 1981. This report also presents an outline of strategies and programs to implement several of the major recommendations made by Select Commissioners.

The chapters which follow do not cover all of the important topics addressed by the Commission. For example, there is no chapter on nonimmigrant aliens or on the territories. This is a function of time constraints, for the staff had only between March 1 and April 30, 1981 to complete its detailed redraft of the Immigration and Nationality Act and this report and its appendixes. Regrettably, some important topics could not be treated at all.

The scheme of the report is straightforward. Following an introduction which outlines the human dimensions of world migration, four succeeding chapters explicate the underlying principles of immigration reform--international cooperation, the open society and the rule of law--which formed the basis for most of the Commission's recommendations. These chapters are followed by two other sections which spell out, in considerable detail, the background to some of the most important recommendations made by the Select Commission--dealing with the number of immigrants and refugees to be admitted, the criteria for their selection and the enforcement of immigration policy --and the strategies for implementing those recommendations. The last section consists of an extensive bibliography on topics which should be of particular interest to researchers.

Nine appendixes accompany the staff report. The first seven contain compilations of important papers which came to the attention of the Select Commission, either through research it undertook or contracted for, testimony received at public hearings, papers submitted at consultations conducted by the Commission or in requested agency research. In addition, several summaries of papers published elsewhere have been included because of their importance. Two other appendixes contain additional information on public affairs activities and summaries of Select Commission votes. The appendixes are:

A. Papers on U.S. Immigration History

B. Papers on International Migration

C. Papers on Refugees

D. Papers on Legal Immigration to the United States

E. Papers on Undocumented/Illegal Migration to the United States

F. Papers on Temporary Worker Programs

G. Papers on the Administration of Immigration Law

H. Public Information Supplement

I. Summary of Recommendations and Votes

Special mention should be made also of four important studies done for the Select Commission by the Congressional Research Service of the Library of Congress at the request of Senator Edward M. Kennedy, as Chairman of the Senate Judiciary Committee. These reports, U.S. Immigration Law and Policy (May 1979), A Review of U.S. Refugee Resettlement Programs and Policies (July 1979), Temporary Worker Programs: Background and Issues (February 1980), and A History of the Immigration and Naturalization Service (December 1980), were of inestimable value to the staff of the Select Commission. A special word of appreciation must go to Senator Kennedy, Jerry Tinker of the Senator's staff, and Joyce Vialet, of the Congressional

Research Service, who was primarily responsible for their production. In addition, Ms. Vialet, also at Senator Kennedy's request, prepared an anthology of "Selected Readings on U.S. Immigration Policy and Law" for the Select Commission which, when added to the appendixes accompanying the staff report, makes another companion volume.

The Work of the Commission (July 1979-June 1980)

I would like to share with the reader and historians an overview of how the Select Commission went about its work. Toward that end, we have included a foldout chart at the end of this Foreword which provides a chronological outline of the Commission's activities.

It was not until August 1979 that the Commission had the funds, an office and a staff to begin to organize its work. Its job was to develop the most up-to-date, accurate and comprehensive analysis on the range of issues before the Select Commission. Decisions were made to focus on six major activities--research, public hearings, site visits, Commission meetings, consultations and publications--and the staff designed a work plan for their implementation.

Development of Research Plan. The overall research plan provided for collection of new data concerning the impact of immigrants and refugees on American society, an assessment of the nature and magnitude of migration pressures on the United States, the relationship of those pressures to economic and foreign policy, and an assessment and analyses of all existing research on illegal migration to the United States.

Early in its deliberations the Commission decided not to spend money on what would be a fruitless effort to count the number of illegal aliens, since there was no prospect of improving on existing data already available, unreliable as it was, in the time permitted the Commission. This decision was made in full realization of the desire of Congress and the public for a precise estimate of the number of illegal aliens in the United States. Facing that reality, the Commission decided to deal quickly and thoroughly with illegal migrant issues because of their great importance through consultations, public hearings and briefing papers, as well as through an assessment of existing research findings.

Organizing the Task Forces. To conduct research on policies and programs concerning immigrants and refugees, seven task forces, consisting of persons from outside the government as well as inside, worked with the staff to develop policy papers. Four of the task forces concerned different kinds of migrants: illegal migrants, immigrants, refugees and nonimmigrant aliens. Three other task forces dealt with all categories of migrants: operations and structure of the Immigration and Naturalization Service, and the Departments of State and Labor; the territories and legal process issues. These task forces developed more than 50 briefing and background papers for Commissioners with information and analyses on issues discussed at the regional hearings, consultations and Select Commission meetings.

Social Science Research. The Select Commission used multiple research sources:

- Select Commission staff research;
- Contract research, performed by outside experts;
- Research prepared by and for other government agencies; and
- Research submitted voluntarily by outside individuals and groups.

This research focused on two major issues--the many aspects of migration and the impact of immigration on American society. Twenty-two research grants were awarded to outside contractors. Final reports were submitted in July 1980 and summaries were prepared by the staff for the Commissioners' review.

Several government agencies were asked to provide information about immigration-related research done in or for their departments. In addition, the Bureau of the Census; the Library of Congress; the Departments of State, Labor, Health and Human Services and the Immigration and Naturalization Service prepared reports to answer specific Commission questions. The Departments of Agriculture and Commerce also prepared less extensive but important responses to questions from the Commission.

Legal Research. In response to its legislative mandate to conduct a comprehensive review of the provisions of the Immigration and Nationality Act, a special Legal Research Task Force was set up. The task force's activities included soliciting testimony from a variety of individuals and groups at the Commission's 12 regional hearings; identifying areas where further research was needed; bringing together leading scholars, experts, practitioners, and representatives from appropriate governmental agencies as well as spokespeople for different interest groups to discuss the proposed changes; and preparation of issue papers for Commissioners on key decisions under discussion. Based upon these analyses, the staff's task was to redraft the Immigration and Nationality Act.

Regional Hearings and Site Visits. At their second meeting on October 9, 1979, Commission members voted to hold 12 regional hearings in order to hear from as many people, from as many backgrounds, on as many issues facing the Commission as possible. To ensure this diversity, the hearings, each held in a different city throughout the United States, were organized in three-part sessions. Time was provided for invited expert witnesses to present the Commission with needed information, for members of the public to voice their opinions with regard to immigration policy, and for site visits to give the Commissioners and staff an opportunity to see immigration policy in practice.

By the time the last hearing concluded on June 9, 1980, the Commissioners had heard from 698 witnesses. Of these, 401 had been invited to testify and 297 had presented their views in the "open microphone" sessions (the several hours provided in the evening for anyone who wished to address the Commission). These invited witnesses and "open mike" speakers represented a variety of ethnic, racial, religious and interest groups.

On the day following each hearing and on other occasions as well, members of the staff and Commissioners visited agencies, centers, neighborhoods, factories, detention centers, INS offices, schools, churches or other locations to observe firsthand the workings of the Immigration and Nationality Act as it applied to individuals or groups of people directly. Such site visits complemented the public hearings for there was time to engage in long conversations with individuals to obtain specific information which was of considerable help in developing policy alternatives.

Summaries of testimony received at the public hearings and site visits were prepared and made available to Commissioners, their staff representatives and the public.

Consultations. As part of its continuing dialogue with experts and special interest groups around the nation, the Select Commission held 24 consultations. The purpose behind these seminars was to bring together scholars and experts in various fields--both within government and from private businesses and agencies--to provide Commission members and staff with the best-informed opinions on the range of issues that had to be reviewed, and on the implications of various policy alternatives under consideration.

At these meetings, many of which lasted an entire day, the Commission and its staff heard experts present their various and often opposing solutions to the problems under discussion. Participants did not always reach a consensus; often, a consultation raised as many questions as it answered. But even when an issue was not resolved, the discussion provided valuable insight and information on the complexity of the problem and the variety of viewpoints to be considered. Seven of the consultations focused on issues related to undocumented/illegal aliens; other consultation discussions covered topics ranging from the civic and language education of immigrants and refugees to the demographic results of alternative models of fertility and immigration. Again, summaries of each consultation were prepared and made available to Commissioners and the public.

Commission Meetings. These meetings provided the occasion for Commission members to review briefing and background papers prepared by the research staff and to discuss the issues and perspectives raised by participants at the consultations and regional hearings as well as an opportunity to exchange views among themselves. Five public meetings were held prior to a two-day meeting in December 1980 and an afternoon meeting in January 1981 at which the Commission's final recommendations were voted.

Public Information. The Commission's Newsletter (a monthly publication distributed to more than 8,000 people describing ongoing Commission activities) was published 14 times. In addition, 20,000 copies of a brochure about the Select Commission, its mandate, the key issues it would address, and a brief history of U.S. immigration policy were distributed to the public.

At its Washington, D.C. headquarters, the Commission maintained a Public Information Center where copies of papers and working documents, summaries of consultations, Commission meetings, contract research, and regional hearings (including actual transcripts of discussions) were available. More than

1,000 interested members of the public reviewed materials, and the Commission staff responded to more than 3,000 requests for information on its activities and plans.

As required by law, the Commission also submitted two comprehensive Semiannual Reports to the Congress and the President on March 1, 1980 and October 1, 1980, respectively. These reports contained detailed summaries of the consultations, regional hearings, Commission meetings, and research activities, as well as the perspectives of individual Commissioners on the work to date.

Developing Policy Options (July-November 1980)

For more than a year Select Commissioners had planned to meet early in December 1980 for a weekend of intensive discussions at which the Commission's final recommendations would be voted. It was clear from discussions among Commissioners that there was agreement on a good many issues but disagreement on others. It was also clear that Commissioners needed a way to respond to the extensive information and analyses obtained as a result of the first year's work.

Straw Ballots. Acting upon my instructions, the staff prepared a series of 11 nonbinding straw ballots, with policy analyses on key immigration issues before the Commission. Each straw ballot contained background information (summarized from research, consultations, public hearings and other Commission activities), discussion of the advantages and disadvantages of various policy options, and a set of ballot questions for Commissioners to record their nonbinding preferences and comments. Each straw ballot result was recorded and analyzed to give Commissioners a sense of each other's positions on key issues.

Development of Decision Memoranda. To put into sharper focus the many questions raised by Commissioners in their straw ballot responses and to provide additional information and analysis on a wider range of issues and their potential interrelationships, 74 decision memoranda were prepared. Each decision memorandum summarized extensive background material, weighed the pros and cons of the policy alternatives presented, contained an analysis of public opinion, and, sometimes, a staff recommended option, as well as a summary sheet where Commissioners could record their preference or alternative proposals in preparation for the December meetings.

Drafting of the Final Recommendations (December 1980-February 1981).

After 25 hours of discussion and voting on the options presented in the decision memoranda, Select Commissioners completed their final recommendations on December 6-7, 1980 and January 6, 1981. Based on these decisions, the staff was instructed to draft a report of the recommendations for Commissioner review. Due to time constraints imposed by the legislative mandate to report to the Congress and the President no later than March 1, 1981, I asked Attorney General Benjamin Civiletti to chair a Commission subcommittee to review suggestions for changes in the draft version of our final report, which the subcommittee did on January 27, 1981. Exactly one month later, the report was presented to Vice President George Bush, acting for the President, to the Majority Leader of the House of Representatives, James C. Wright, Jr. and to the Chairman of the Senate Judiciary Committee, Senator Strom Thurmond, acting on behalf of the Congress.

As I look back over the past months, I am reminded that while Select Commissioners worked to develop an immigration policy for the future that was rational, humane, enforceable and, above all, in the U.S. national interest, their discussions and deliberations took place in a world that was constantly changing and at a time when immigration and refugee policies were continually being evaluated by the public as well as by experts. A few of the many events that occurred during the period the Commission was in existence that stand out for me are:

Iran imprisons U.S. hostages	November 1979
Soviet Union invades Afghanistan	December 1979
Refugee Act of 1980 enacted	March 1980
Cuban push-out from Mariel Harbor--125,000 Cubans arrive in the United States to claim asylum	April-October 1980
Judge King rules that the government could not deport Haitian asylum claimants and requires the government to submit a detailed plan for reprocessing of their claims	May 1980
Unrest in Poland--Solidarity organizes labor strikes	Summer 1980
Smuggled Salvadorean aliens die in the Arizona desert	September 1980

Ronald Reagan elected 40th President	November 1980
U.N. High Commissioner estimates there are more than 16 million refugees worldwide	January 1981
Iran releases the 52 American hostages	January 1981
Civil unrest continues in some African nations--more than 1.5 million people take refuge in Somalia, a country with only 3.5 million citizens	April 1981

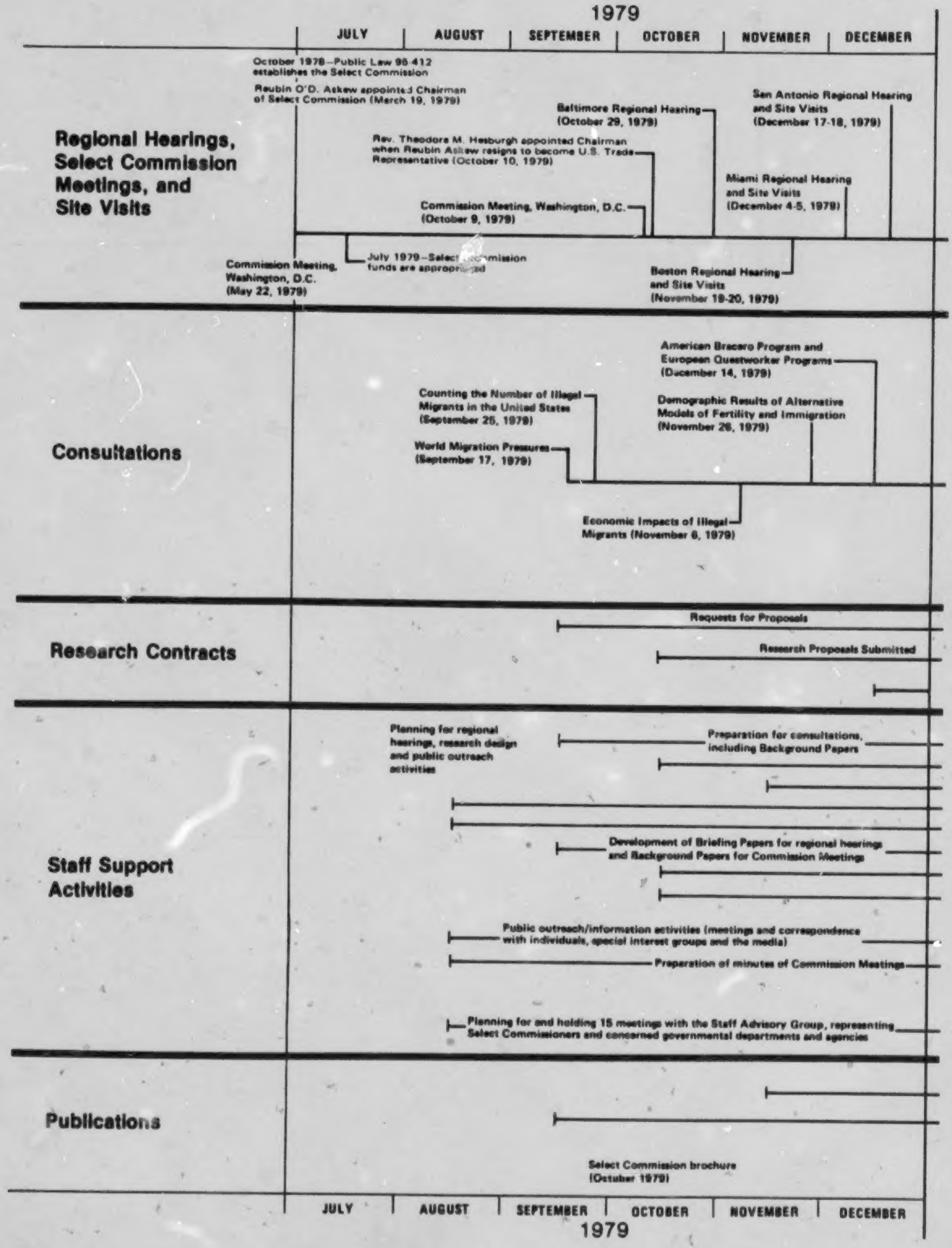
On April 30, I end my tenure as Chairman of the Select Commission. To those who served as Select Commissioners, my appreciation for the dedication and thoroughness with which they approached a most difficult task. To the members of the Staff Advisory Group, my thanks for the advice and support which they gave to Lawrence H. Fuchs and the staff. To those many, many individuals and groups who testified at the public hearings, came to the consultations and meetings, and invited us into their homes, churches, businesses, and communities, my sincere appreciation, for you are the heartbeat of this great country.

I want to thank my predecessor as chairman, Reuben O'D. Askew, for getting the Commission and the staff off to a good start. And, finally, as I said in my letter transmitting the recommendations of the Commission to the President and the Congress, the Commission is deeply indebted and grateful for the leadership of our Executive Director, Lawrence H. Fuchs, who wrote the first five chapters of this volume, and to his dedicated and able colleagues, Ralph Thomas, Deputy Director; Sandra A. Stevens, Special Assistant to the Director; and Nina K. Solarz, Director of Public Affairs and Elaine Daniels of the Public Affairs staff. While this volume could not have been produced without the help of all of the staff, a special thanks should go to the equally dedicated and able group who wrote most of it: Susan S. Forbes, Research Director; Janelle Jones, Editor and Research Associate; Lisa Smith Roney, Research Associate; and Barbara S. Kraft, Editor. Thanks also to Robert J. Portman and Daniel C. Bryant for their work on the appendixes and to Sheila H. Murphy and Philip M. Wharton for research assistance and analyses on all volumes. No thank you would be sufficient for the efforts (night and day and weekends) of Sharon Sullivan Lizama, Karen Veek and Susana Gomez-Collins in producing the staff report and its appendixes. My appreciation also goes to the secretaries who worked under great pressure to meet the April 30 deadline: Antrena Bankhead Myers, Vanna J. Shields and Beula E. Sprague. Finally, thanks to Avelina R. Sabangan, who after organizing and typing most of the Immigration and Nationality Act for the legal research staff, volunteered to work on the project over the last weekend even though she already had another job, and to Terry Wilkerson, who succeeded her in typing the proposed Immigration and Nationality Act.

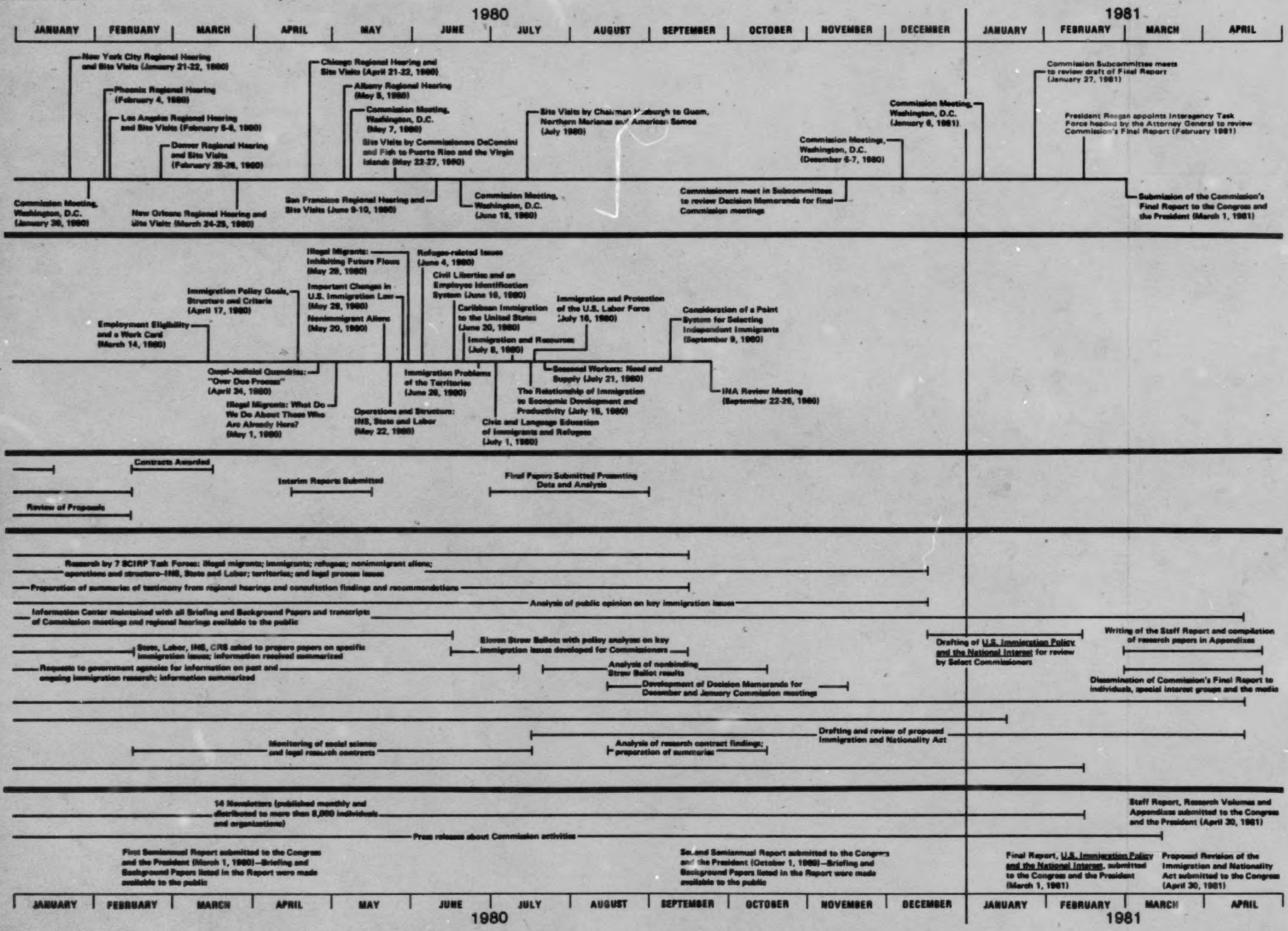
Theodore M. Hesburgh

South Bend, Indiana
April 1981

Rev. Theodore M. Hesburgh,
Chairman


1979
JULY
AUGUST
SEPTEMBER
OCTOBER
NOVEMBER
DECEMBER
Regional Hearings, Select Commission Meetings, and Site Visits
October 1978—Public Law 95-412 establishes the Select Commission
Reubin O'D. Askew appointed Chairman of Select Commission (March 19, 1979)
Baltimore Regional Hearing (October 29, 1979)
San Antonio Regional Hearing and Site Visits (December 17-18, 1979)
Rev. Theodore M. Hesburgh appointed Chairman when Reubin Askew resigns to become U.S. Trade Representative (October 10, 1979)
Miami Regional Hearing and Site Visits (December 4-5, 1979)
Commission Meeting, Washington, D.C. (October 9, 1979)
Commission Meeting, Washington, D.C. (May 22, 1979)
July 1979—Select Commission funds are appropriated
Boston Regional Hearing and Site Visits (November 19-20, 1979)
Consultations
American Bracero Program and European Guestworker Programs (December 14, 1979)
Counting the Number of Illegal Migrants in the United States (September 25, 1979)
Demographic Results of Alternative Models of Fertility and Immigration (November 26, 1979)
World Migration Pressures (September 17, 1979)
Economic Impacts of Illegal Migrants (November 6, 1979)
Research Contracts
Requests for Proposals
Research Proposals Submitted
Staff Support Activities
Planning for regional hearings, research design and public outreach activities
Preparation for consultations, including Background Papers
Development of Briefing Papers for regional hearings and Background Papers for Commission Meetings
Public outreach/information activities (meetings and correspondence with individuals, special interest groups and the media)
Preparation of minutes of Commission Meetings
Planning for and holding 15 meetings with the Staff Advisory Group, representing Select Commissioners and concerned governmental departments and agencies
Publications
Select Commission brochure (October 1979)
JULY
AUGUST
SEPTEMBER
OCTOBER
NOVEMBER
DECEMBER
1979

Timetable of Select Commission on Immigration and Refugee Policy Activities
May 1979 - April 1981



RECOMMENDATIONS AND VOTES OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY*

SECTION I. INTERNATIONAL ISSUES†

I.A. Better Understanding of International Migration

The Select Commission recommends that the United States continue to work with other nations and principal international organizations that collect information, conduct research and coordinate consultations on migratory flows and the treatment of international migrants, to develop a better understanding of migration issues.

Commission vote: Yes-16

I.B. Revitalization of Existing International Organizations

The Select Commission recommends that the United States initiate discussion through an international conference on ways to revitalize existing institutional arrangements for international cooperation in the handling of migration and refugee problems.

Commission vote: Yes-16

I.C. Expansion of Bilateral Consultations

The Select Commission recommends that the United States expand bilateral consultations with other governments, especially Mexico and other regional neighbors, regarding migration.

Commission vote: Yes-16

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*As former Representative Elizabeth Holtzman was no longer a member of the Select Commission on January 6, 1981, the sum of each vote taken at the meeting is fifteen rather than sixteen.

†The Select Commission voted on a package of proposals that form Recommendations I.A. through I.D.
Votes on floor amendments to packages of recommendations are in place of the block vote on those issues.

I.D. The Creation of Regional Mechanisms

The United States should initiate discussions with regional neighbors on the creation of mechanisms to:

- Discuss and make recommendations on ways to promote regional cooperation on the related matters of trade, aid, investment, development and migration;
- Explore additional means of cooperation for effective enforcement of immigration laws;
- Establish means for mutual cooperation for the protection of the human and labor rights of nationals residing in each other's countries;
- Explore the possibility of negotiating a regional convention on forced migration or expulsion of citizens; and
- Consider establishment of a regional authority to work with the U.N. High Commissioner for Refugees and the Intergovernmental Committee on Migration in arranging for the permanent and productive resettlement of asylees who cannot be repatriated to their countries of origin.

Commission vote: Yes-16

SECTION II. UNDOCUMENTED/ILLEGAL ALIENS

II.A. Border and Interior Enforcement*

II.A.1. Border Patrol Funding

The Select Commission recommends that Border Patrol funding levels be raised to provide for a substantial increase in the numbers and training of personnel, replacement sensor systems, additional light planes and helicopters and other needed equipment.

Commission vote: Yes-15 Pass-1

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*The Select Commission voted on two packages of proposals: Recommendations II.A.1 through II.A.3 and II.A.7, and Recommendations II.A.5 and II.A.6.

II.A.2. Port-of-Entry Inspections

The Select Commission recommends that port-of-entry inspections be enhanced by increasing the number of primary inspectors, instituting a mobile inspections task force and replacing all outstanding border-crossing cards with a counterfeit-resistant card.

Commission vote: Yes-15 Pass-1

II.A.3. Regional Border Enforcement Posts

The Select Commission recommends that regional border enforcement posts be established to coordinate the work of the Immigration and Naturalization Service, the U.S. Customs Service, the Drug Enforcement Administration and the U.S. Coast Guard in the interdiction of both undocumented/illegal migrants and illicit goods, specifically narcotics.

Commission vote: Yes-15 Pass-1

II.A.4. Enforcement of Current Law

The Select Commission recommends that the law be firmly and consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country.

Commission vote: Yes-14 Absent-1

II.A.5. Nonimmigrant Visa Abuse

The Select Commission recommends that investigations of overstays and student visa abusers be maintained regardless of other investigative priorities.

Commission vote: Yes-16

II.A.6. Nonimmigrant Document Control

The Select Commission recommends that a fully automated system of nonimmigrant document control should be established in the Immigration and Naturalization Service to allow prompt tracking of aliens and to verify their departure. U.S. consular posts of visa issuance should be informed of nondepartures.

Commission vote: Yes-16

II.A.7. Deportation of Undocumented/Illegal Migrants

The Select Commission recommends that deportation and removal of undocumented/illegal migrants should be effected to discourage early return. Adequate funds should be available to maintain high levels of alien apprehension, detention and deportation throughout the year. Where possible, aliens should be required to pay the transportation costs of deportation or removal under safeguards.

Commission vote: Yes-15 Pass-1

II.A.8. Training of INS Officers

The Select Commission recommends high priority be given to the training of Immigration and Naturalization Service officers to familiarize them with the rights of aliens and U.S. citizens and to help them deal with persons of other cultural backgrounds. Further, to protect the rights of those who have entered the United States legally, the Commission also recommends that immigration laws not be selectively enforced in the interior on the basis of race, religion, sex, or national origin.

Commission vote: Yes-15 Pass-1

II.B. Economic Deterrents in the Workplace

II.B.1. Employer Sanctions Legislation

The Select Commission recommends that legislation be passed making it illegal for employers to hire undocumented workers.

Commission votes:
Do you favor employer sanctions?

Yes-14 No-2

Do you favor employer sanctions with some existing form of identification?

Yes-9 No-7

Do you favor employer sanctions with some system of more secure identification?

Yes-8 No-7 Pass-1

II.B.2. Enforcement Efforts in Addition to Employer Sanctions

The Select Commission recommends that the enforcement of existing wage and working standards legislation be increased in conjunction with the enforcement of employer responsibility legislation.

Commission vote: Yes-14 No-1 Pass-1

II.C. Legalization

The Select Commission recommends that a program to legalize undocumented/illegal aliens now in the United States be adopted.

II.C.1. Eligibility for Legalization

The Select Commission recommends that eligibility be determined by interrelated measurements of residence--date of entry and length of continuous residence--and by specified grounds of excludability that are appropriate to the legalization program.

Commission votes:
Eligibility should be determined by interrelated measurement of residence. No one should be eligible who was not in the country before January 1, 1980. Congress should establish a minimum period of continuous residency to further establish eligibility.

Yes-16

The exclusion grounds for undocumented/illegal migrants who otherwise qualify for legalization should be appropriate to the legalization program.

Yes-12 Pass-1 Absent-2

II.C.2. Maximum Participation in the Legalization Program

The Select Commission recommends that voluntary agencies and community organizations be given a significant role in the legalization program.

Commission vote: Yes-16

II.C.3. Legalization and Enforcement

The Select Commission recommends that legalization begin when appropriate enforcement mechanisms have been instituted.

Commission vote: Yes-16

II.C.4. Unqualified Undocumented/Illegal Aliens

The Select Commission recommends that those who are ineligible for a legalization program be subject to the penalties of the Immigration and Nationality Act if they come to the attention of immigration authorities.

Commission vote: Yes-12 No-4

SECTION III. THE ADMISSION OF IMMIGRANTS

III.A. Numbers of Immigrants

III.A.1. Numerical Ceilings on Total Immigrant Admissions

The Select Commission recommends continuing a system where some immigrants are numerically limited but certain others--such as immediate relatives of U.S. citizens and refugees--are exempt from any numerical ceilings.

Commission vote: Yes-15 No-1

III.A.2. Numerically Limited Immigration

The Select Commission recommends an annual ceiling of 350,000 numerically limited immigrant visas with an additional 100,000 visas available for the first five years to provide a higher ceiling to allow backlogs to be cleared.

Commission vote:
Option 1. Provide an annual ceiling of 350,000 numerically limited immigrant visas with an additional 100,000 visas available for the first five years to provide a higher ceiling to allow backlogs to be cleared.

12 votes

Option 2. Continue the present annual ceiling on immigration (270,000) until effective enforcement is in place and then consider raising the ceiling.

4 votes

III.B. Goals and Structure

III.B.1. Categories of Immigrants

The Select Commission recommends the separation of the two major types of immigrants--families and independent (nonfamily) immigrants--into distinct admissions categories.

Commission vote: Yes-16

III.C. Family Reunification

The Select Commission recommends that the reunification of families should continue to play a major and important role in U.S. immigration policy.

Commission vote:
Recommendation flows from the combined votes for Recommendations III.C.1. through III.C.5.

III.C.1. Immediate Relatives of U.S. Citizens

The Select Commission recommends continuing the admission of immediate relatives of U.S. citizens outside of any numerical limitations. This group should be expanded slightly to include not only the spouses, minor children and parents of adult citizens, but also the adult unmarried sons and daughters and grandparents of adult U.S. citizens. In the case of grandparents, petitioning rights for the immigration of relatives should not attach until the petitioner acquires U.S. citizenship.

Commission votes:
This recommendation encompasses five individual votes:

Spouses of U.S. citizens should remain exempt from the numerical limitations placed on immigration to the United States.

Yes-16

Numerically exempt all unmarried children of U.S. citizens, minor and adult.

Yes-14 No-2

Continue the present practice which allows the numerically unlimited entry of parents of adult U.S. citizens.

Yes-16

The parents of minor U.S. citizen children should be admitted.

Yes-3 No-13

Include grandparents of adult U.S. citizens in the numerically exempt category but without the right to petition for any other relatives until they acquire U.S. citizenship.

Yes-13 No-3

III.C.2. Spouses and Unmarried Sons and Daughters of Permanent Resident Aliens

The Select Commission recognizes the importance of reunifying spouses and unmarried sons and daughters with their permanent resident alien relatives. A substantial number of visas should be set aside for this group and it should be given top priority in the numerically limited family reunification category.

Commission vote:
Option 1. Continue the present practice which limits the number of spouses and unmarried sons and daughters admitted annually to the United States.

9 votes

Option 1A. Continue to admit the spouses of permanent resident aliens within the numerical limitations, but limit the immigration of sons and daughters to only those who are minors and unmarried.

3 votes

Option 2. Exempt the spouses and unmarried sons and daughters of permanent residents from numerical limitation.

4 votes

III.C.3. Married Sons and Daughters of U.S. Citizens

The Select Commission recommends continuing a numerically limited preference for the married sons and daughters of U.S. citizens.

Commission vote: Yes-15 No-1

III.C.4. Brothers and Sisters of U.S. Citizens

The Select Commission recommends that the present policy of admitting all brothers and sisters of adult U.S. citizens within the numerical limitations be continued.

Commission vote:
Option 1. Maintain the present practice which numerically limits the immigration of brothers and sisters of adult U.S. citizens.

9 votes

Option 2. Eliminate the provision for the immigration of brothers and sisters of adult U.S. ciizens from the new immigration system.

No votes

Option 3. Provide for the numerically limited immigration of unmarried brothers and sisters of adult U.S. citizens.

7 votes

III.C.5. Parents of Adult Permanent Residents

The Select Commission recommends including a numerically limited preference for certain parents of adult permanent resident aliens. Such parents must be elderly and have no children living outside the United States.

Commission vote:

Option 1. Continue the present system which does not provide for the entry of parents of legal permanent residents.

3 votes

Option 2. Provide for the numerically limited entry of parents of legal permanent residents.

2 votes

Option 3. Provide for the numerically limited entry of parents of legal permanent residents when those parents have an only child in the United States and are elderly.

11 votes

III.C.6. Country Ceilings

The Select Commission recommends that country ceilings apply to all numerically limited family reunification preferences except to that for the spouses and minor children of permanent resident aliens, who should be admitted on a first-come, first-served basis within a worldwide ceiling set for that preference.

Commission vote:
Option 1. Maintain the present practice, with country ceilings applied to family reunification preferences.

2 votes

Option 2. Eliminate country ceilings for family reunification preferences.

3 votes

Option 3. Raise country ceilings to partially accommodate all sending countries.

2 votes

Option 4. Continue country ceilings for all family reunification preferences except that for the spouses and minor children of permanent resident aliens.

8 votes

Pass-1

III.C.7. Preference Percentage Allocations

The Select Commission recommends that percentages of the total number of visas set aside for family reunification be assigned to the individual preferences.

Commission vote:
Option 1. Maintain the present practice which assigns percentages to numerically limited family reunification preferences.

1 vote

Option 1A. Maintain the present practice which assigns percentages to numerically limited family reunification preferences and to immigrants with special qualifications in the independent category.

12 votes

Option 2. Eliminate percentages for the numerically limited family reunification preferences and meet visa demand in higher preferences before issuing visas in lower preferences.

3 votes

III.D. Independent Immigration

The Select Commission recommends that provision be made in the immigrant admissions system to facilitate the immigration of persons without family ties in the United States.

Commission vote:
Recommendation flows from the combined votes for Recommendations III.D.2, III.D.3. and III.D.5.

III.D.1. Special Immigrants

The Select Commission recommends that "special" immigrants remain a numerically exempt group but be placed within the independent category.

Commission vote: Yes-16

III.D.2. Immigrants with Exceptional Qualifications

The Select Commission recognizes the desirability of facilitating the entry of immigrants with exceptional qualifications and recommends that a small, numerically limited category be created within the independent category for this purpose.

Commission vote:
Option 1. Do not create a separate category for immigrants with exceptional qualifications but allow them

to enter as they qualify under the provisions of the independent category.

3 votes

Option 2. Create a small, numerically limited subcategory in the independent category for immigrants with exceptional qualifications.

13 votes

III.D.3. Immigrant Investors

The Select Commission recommends creating a small, numerically limited subcategory within the independent category to provide for the immigration of certain investors. The criteria for the entry of investors should be a substantial amount of investment or capacity for investment in dollar terms substantially greater than the present $40,000 requirement set by regulation.

Commission vote:
Option 1. Make no special provision for investors.

1 vote

Option 2. Make provision for investors by including them on the Department of Labor Schedule A (if it is retained) or, if not, by other regulation so investors can enter in the independent category.

No votes

Option 3. Create a small numerically limited subcategory for investors in the independent category but increase the amount of the investment to an amount significantly greater than the present $40,000.

15 votes

III.D.4. Retirees

The Select Commission recommends that no special provision be made for the immigration of retirees.

Commission vote:
Option 1. Make no special provision for the immigration of retirees.

10 votes

Option 2. Do not create a special category for retirees but make provision by regulation for their entry as independent immigrants if they can prove they have continuing income to be self-supporting.

3 votes

Option 3. Create a numerically small subcategory of visas specifically for retirees in the independent category.

3 votes

III.D.5. Other Independent Immigrants

The Select Commission recommends the creation of a category for qualified independent immigrants other than those of exceptional merit or those who can qualify as investors.

Commission vote:
Option 1. Provide no means for entry of independent immigrants beyond special immigrants and immigrants with special qualifications.

2 votes

Option 2. Provide a subcategory within the independent category for other qualified immigrants.

13 votes Pass-1

III.D.6. Selection Criteria for Independent Immigrants

The Select Commission believes that specific labor market criteria should be established for the selection of independent immigrants, but is divided over whether the mechanism should be a streamlining and clarification of the present labor certification procedure plus a job offer from a U.S. employer, or a policy under which independent immigrants would be admissible unless the Secretary of Labor ruled that their immigration would be harmful to the U.S. labor market.

Commission vote:

Option 1. Revise the present labor certification procedure and require prospective immigrants to have U.S. job offers.

7 votes

Option 2. Revise the labor certification procedure to make prospective independent immigrants admissible unless the Secretary of Labor has certified there are sufficient workers and require prospective immigrants to have U.S. job offers.

No votes

Option 2A. Revise the labor certification procedure to make prospective independent immigrants admissible unless the Secretary of Labor has certified there are sufficient workers but do not require a U.S. job offer.

7 votes

Option 3. Point system based on multiple criteria.

2 votes

III.D.7. Country Ceilings

The Select Commission recommends a fixed-percentage limit to the independent immigration from any one country.

Commission vote:

Option 1. Do not impose per-country ceilings on independent immigration.

4 votes

Option 2. Do not impose per-country ceilings on independent immigration but bar independent immigration to nationals of any country where immigration in the family reunification category exceeded 50,000 in the preceding year, or, if administratively feasible, in the same year.

1 vote

Option 2A. Continue annual per-country ceiling of 20,000 and reduce the number of visas available in the independent category to natives of a country by the number used by that country in the numerically limited family reunification category.

3 votes

Option 3. Establish a fixed, uniform numerical ceiling on independent immigration from any one country.

No votes

Option 4. Establish a fixed percentage as a limit on independent immigration from any one country.

8 votes

III.E. Flexibility in Immigration Policy

III.E.1. Review Mechanism for Flexibility

Create an Immigration Advisory Council to assess domestic and international conditions and recommend changes in immigration levels.

Commission vote: Yes-6 No-9 Pass-1

The Select Commission recommends that ranking members of the House and Senate subcommittees with immigration responsibilities, in consultation with the Departments of State, Justice and Labor, prepare an annual report on the current domestic and international situations as they relate to U.S. immigration policy.

Commission vote: Yes-16

SECTION IV. PHASING IN NEW PROGRAMS RECOMMENDED BY THE SELECT COMMISSION

The Select Commission recommends a coordinated phasing in of the major programs it has proposed.

Commission vote: Yes-12 No-1 Pass-3

SECTION V. REFUGEE AND MASS FIRST ASYLUM ISSUES

V.A. The Admission of Refugees

The Select Commission endorses the provisions of the Refugee Act of 1980 which cover the definition of refugee, the number of visas allocated to refugees and how these numbers are allocated.*

Commission vote: Yes-11 No-3 Absent-1

V.A.1. Allocation of Refugee Numbers

The Select Commission recommends that the U.S. allocation of refugee numbers include both geographic considerations and specific refugee characteristics. Numbers should be provided--not by statute but in the course of the allocation process itself--for political prisoners, victims of torture and persons under threat of death.

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*The Select Commission voted on a package of proposals that form the Recommendations in V.A., V.C. and V.D.

Commission vote: Yes-11 No-3 Absent-1

V.B. Mass First Asylum Admissions*

V.B.1. Planning for Asylum Emergencies

The Select Commission recommends that an interagency body be established to develop procedures, including contingency plans for opening and managing federal processing centers, for handling possible mass asylum emergencies.

Commission vote: Yes-12 No-3 Pass-1

V.B.2. Determining the Legitimacy of Mass Asylum Claims

The Select Commission recommends that mass asylum applicants continue to be required to bear an individualized burden of proof. Group profiles should be developed and used by processing personnel and area experts (see Recommendation V.B.4.) to determine the legitimacy of individual claims.

Commission votes: Yes-13 No-1 Absent-1

V.B.3. Developing and Issuing Group Profiles

The Select Commission recommends that the responsibility for developing and issuing group profiles be given to the U.S. Coordinator for Refugee Affairs.

Commission vote:

(On specific motion to give responsibility to the U.S. Coordinator for Refugee Affairs)

Yes-10 No-4 Absent-1

V.B.4. Asylum Admissions Officers

The Select Commission recommends that the position of Asylum Admissions officer be created within the Immigration and Naturalization Service. This official should be schooled in the procedures and techniques of eligibility determinations. Area experts should be made available to these processing personnel to provide information on conditions in the source country, facilitating a well-founded basis for asylum determinations.

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*The Select Commission voted on a package of proposals that form Recommendations V.B.2 through V.B.5.

Commission vote: Yes-14 Absent-1

V.B.5. Asylum Appeals

The Select Commission holds the view that in each case a single asylum appeal be heard and recommends that the appeal be heard by whatever institution routinely hears other immigration appeals.

Commission vote: Yes-13 No-1 Absent-1

V.C. Refugee Resettlement*

The Select Commission endorses the overall programs and principles of refugee resettlement but takes note of changes that are needed in the areas of cash and medical assistance programs, strategies for resettlement, programs to promote refugee self-sufficiency and the preparation of refugee sponsors.

Commission vote: Yes-11 No-3 Absent-1

V.C.1. State and Local Governments

The Select Commission recommends that state and local governments be involved in planning for initial refugee resettlement and that consideration be given to establishing a federal program of impact aid to minimize the financial impact of refugees on local services.

Commission vote: Yes-9 No-3 Pass-1 Absent-2

V.C.2. Refugee Clustering

The Select Commission recommends that refugee clustering be encouraged. Mechanisms should be developed, particularly within the voluntary agency network, to settle ethnic groups of similar backgrounds in the same areas.

Commission vote: Yes-11 No-3 Absent-1

V.C.3. Resettlement Benefits

The Select Commission recommends that consideration be given to an extension of federal refugee assistance reimbursement.

Commission vote: Yes-9 No-3 Pass-1 Absent-2

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*The Select Commission voted on package of proposals that form the Recommendations in V.A., V.C. and V.D.

V.C.4. Cash-Assistance Programs

The Select Commission recommends that stricter regulations be imposed on the use of cash-assistance programs by refugees.

Commission vote: Yes-11 No-3 Absent-1

V.C.5. Medical-Assistance Programs

The Select Commission recommends that medical assistance for refugees should be more effectively separated from cash-assistance programs.

Commission vote: Yes-11 No-3 Absent-1

V.C.6. Resettlement Goals

The Select Commission recommends that refugee achievement of self-sufficiency and adjustment to living in the United States be reaffirmed as the goal of resettlement. In pursuance of this goal, "survival" training--the attainment of basic levels of language and vocational skills--and vocational counseling should be emphasized. Sanctions (in the form of termination of support and services) should be imposed on refugees who refuse appropriate job offers, if these sanctions are approved by the voluntary agency responsible for resettlement, the cash-assistance source and, if involved, the employment service.

Commission vote: Yes-11 No-3 Absent-1

V.C.7. Sponsors

The Select Commission recommends that improvements in the orientation and preparation of sponsors be promoted.

Commission vote: Yes-11 No-3 Absent-1

V.D. Administration of U.S. Refugee and Mass Asylum Policy*

Commission vote: Yes-11 No-3 Absent-1

V.D.1. Streamlining of Resettlement Agencies

The Select Commission recommends that the Administration, through the Office of the Coordinator for Refugee Affairs, be directed to examine whether the program of resettlement can be streamlined to make government participation more responsive to the flow of refugees coming to this country. Particular attention should be given to the question of whether excessive bureaucracy has been created, although inadvertently, pursuant to the Refugee Act of 1980.

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*The Select Commission voted on a package of proposals that form the Recommendations in V.A, V.C. and V.D.

Commission vote: Yes-10 No-3 Absent-2

V.D.2. U.S. Coordinator for Refugee Affairs

The Select Commission recommends that the office of the U.S. Coordinator for Refugee Affairs be moved from the State Department and be placed in the Executive Office of the President.

Commission vote:
Motion to delete this recommendation failed by a vote of:

Yes-2 No-12 Absent-1

Motion to move the Coordinator's Office to the Executive Office of the President:

Yes-11 No-3 Absent-1

SECTION VI. NONIMMIGRANT ALIENS

VI.A. Nonimmigrant Adjustment to Immigrant Status

The Select Commission recommends that the present system under which eligible nonimmigrants and other aliens are permitted to adjust their status into all immigrant categories be continued.

Commission vote:
Should nonimmigrant and illegal aliens be permitted to adjust to permanent resident status in the United States rather than returning home to obtain a visa?

Option 1: Continue the present system which permits adjustments into all immigrant categories.

9 votes

Option 1A. (Floor Amendment) Allow all persons qualified for immigrant visas to adjust their status, including those groups not now eligible to do so.

1 vote

Option 2: Bar adjustment into any immigrant category.

No votes

Option 3: Allow adjustment into the family but not the independent category.

6 votes

VI.B. Foreign Students*

VI.B.1. Foreign Student Employment

The Select Commission recommends that the United States retain current restrictions on foreign student employment, but expedite the processing of work authorization requests; unauthorized student employment should be controlled through the measures recommended to curtail other types of illegal employment.

Commission vote: Yes-13 Pass-1 Absent-1

Otero Amendment. Eliminate off-campus foreign student employment.

Yes-3 No-10 Absent-1

VI.B.2. Employment of Foreign Student Spouses

The Select Commission recommends that the spouses of foreign students be eligible to request employment authorization from the Immigration and Naturalization Service under the same conditions that now apply to the spouses of exchange visitors.

Commission vote: Yes-13 Pass-1 Absent-1

VI.B.3 Subdivision of the Foreign Student Category

The Select Commission recommends dividing the present all-inclusive F-1 foreign student category into subcategories: a revised F-1 class for foreign students at academic institutions that have foreign student programs and have demonstrated their capacity for responsible foreign student management to the Immigration and Naturalization Service; a revised F-2 class for students at other academic institutions authorized to enroll foreign students that have not yet demonstrated their capacity for responsible foreign student management and a new F-3 class for language or vocational students. An additional F-4 class would be needed for the spouses and children of foreign students.

Commission vote: Yes-13 Pass-1 Absent-1

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*The Select Commission voted on a package of proposals that form Recommendations VI.B.1 through VI.D.4.

VI.B.4. Authorization of Schools to Enroll Foreign Students

The Select Commission recommends that the responsibility for authorizing schools to enroll foreign students be transferred from the Immigration and Naturalization Service to the Department of Education.

Commission vote: Yes-13 Pass-1 Absent-1

VI.B.5 Administrative Fines for Delinquent Schools

The Select Commission recommends establishing a procedure that would allow the Immigration and Naturalization Service to impose administrative fines on schools that neglect or abuse their foreign student responsibilities (for example, failure to inform INS of changes in the enrollment status of foreign students enrolled in their schools).

Commission vote: Yes-13 Pass-1 Absent-1

VI.C. Tourists and Business Travelers*

VI.C.1. Visa Waiver for Tourists and Business Travelers from Selected Countries

The Select Commission recommends that visas be waived for tourists and business travelers from selected countries who visit the United States for short periods of time.

Commission vote: Yes-13 Pass-1 Absent-1

VI.C.2. Improvement in the Processing of Intracompany Transferee Cases

The Select Commission recommends that U.S. consular officers be authorized to approve the petitions required for intracompany transfers.

Commission vote: Yes-13 Pass-1 Absent-1

VI.D. Medical Personnel*

VI.D.1. Elimination of the Training Time Limit for Foreign Medical School Graduates

The Select Commission recommends the elimination of the present two- to three-year limit on the residency training of foreign doctors.

Commission vote: Yes-13 Pass-1 Absent-1

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*The Select Commission voted on a package of proposals that form Recommendations VI.B.1 through VI.D.4.

VI.D.2. **Revision of the Visa Qualifying Exam for Foreign Doctors**

The Select Commission recommends that the Visa Qualifying Exam be revised to deemphasize the significance of the Exam's Part I on basic biological science.

Commission vote: Yes-13 Pass-1 Absent-1

VI.D.3. **Admission of Foreign Nurses as Temporary Workers**

The Select Commission recommends that qualified foreign nurses continue to be admitted as temporary workers, but also recommends that efforts be intensified to induce more U.S. nurses who are not currently practicing their professions to do so.

Commission vote: Yes-13 Pass-1 Absent-1

VI.D.4. **Screening of Foreign Nurses Applying for Visas**

The Select Commission recommends that all foreign nurses who apply for U.S. visas continue to be required to pass the examination of the Commission on Graduates of Foreign Nursing Schools.

Commission vote: Yes-13 Pass-1 Absent-1

VI.E. **H-2 Temporary Workers**

The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers. Proposed changes should:

- Improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process;
- Remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and unemployment insurance for H-2 workers; and maintain the labor certification by the U.S. Department of Labor.
- The Commission believes that government, employers and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers.

The above does not exclude a slight expansion of the program.

Commission vote: Yes-14 No-2

VI.F. **Authority of the Attorney General to Deport Nonimmigrants**

The Select Commission recommends that greater statutory authority be given to the Attorney General to institute deportation proceedings against nonimmigrant aliens when there is conviction for an offense subject to sentencing of six months or more.

Commission vote: Yes-11 Pass-2 Absent-2

SECTION VII. ADMINISTRATIVE ISSUES

VII.A. **Federal Agency Structure**

The Select Commission recommends that the present federal agency structure for administering U.S. immigration and nationality laws be retained with visa issuance and the attendant policy and regulatory mechanisms in the Department of State and domestic operations and the attendant policy and regulatory mechanisms in the Immigration and Naturalization Service of the Department of Justice.

Commission vote: Yes-10 No-3 Absent-2

Ochi Amendment: Transfer immigrant visa issuance from State to INS.

Yes-4 No-9 Absent-2

VII.B. **Immigration and Naturalization Service**

VII.B.1. **Service and Enforcement Functions**

The Select Commission recommends that all major domestic immigration and nationality operations be retained within the Immigration and Naturalization Service, with clear budgetary and organizational separation of service and enforcement functions.

Commission vote: Yes-14 Absent-1

VII.B.2. **Head of the INS**

The Select Commission recommends that the head of the Immigration and Naturalization Service be upgraded to Director at a level similar to that of the other major agencies within the Department of Justice and report directly to the Attorney General on matters of policy.

Commission vote: Yes-14 Absent-1

VII.B.3. Professionalism of INS Employees

The Select Commission recommends the following actions be taken to improve the responsiveness and sensitivity of Immigration and Naturalization Service employees:

- Establish a code of ethics and behavior for all INS employees;
- Upgrade employee training to include meaningful courses at the entry and journeymen levels on ethnic studies and the history and benefits of immigration;
- Promote the recruitment of new employees with foreign language capabilities and the acquisition of foreign language skills in addition to Spanish--in which all officers are now extensively trained--for existing personnel;
- Sensitize employees to the perspectives and needs of the persons with whom they come in contact and encourage INS management to be more sensitive to employee morale by improving pay scales and other conditions of employment;
- Reward meritorious service and sensitivity in conduct of work;
- Continue vigorous investigation of and action against all serious allegations of misfeasance, malfeasance and corruption by INS employees;
- Give officers training to deal with violence and threats of violence;
- Strengthen and formalize the existing mechanism for reviewing administrative complaints, thus permitting the Immigration and Naturalization Service to become more aware of and responsive to the public it serves; and
- Make special efforts to recruit and hire minority and women applicants.

Commission vote: Yes-14 Absent-1

VII.C. Structure for Immigration Hearings and Appeals

VII.C.1. Article I Court

The Select Commission recommends that existing law be amended to create an immigration court under Article I of the U.S. Constitution.

Commission vote: Yes-8 No-4 Pass-1 Absent-2

VII.C.2. Resources for Article I Court

The Select Commission urges that the Court be provided with the necessary support to reduce existing backlogs.

Commission vote: Yes-8 No-4 Pass-1 Absent-2

VII.D. Administrative Naturalization

The Select Commission recommends that naturalization be made an administrative process within the Immigration and Naturalization Service with judicial naturalization permitted when practical and requested. It further recommends that the significance and meaning of the process be preserved by retaining meaningful group ceremonies as the forum for the actual conferring of citizenship.

Commission vote: Yes-14 Absent-1

VII.E. Review of Consular Decisions

The Select Commission recommends that the existing informal review system for consular decisions be continued but improved by enhancing the consular post review mechanism and using the visa case review and field support process of the State Department as tools to ensure equity and consistency in consular decisions.

Commission vote: Yes-11 No-3 Absent-1

VII.F. Immigration Law Enforcement by State and Local Police

The Select Commission recommends that state and local law enforcement officials be prohibited from apprehending persons on immigration charges, but further recommends that local officials continue to be encouraged to notify the Immigration and Naturalization Service when they suspect a person who has been arrested for a violation unrelated to immigration to be an undocumented/illegal alien.

Commission vote: Yes-13 No-1 Absent-1

SECTION VIII. LEGAL ISSUES

VIII.A. Powers of Immigration and Naturalization Service Officers*

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*The Select Commission voted on a package of proposals that form Recommendations VIII.A.1. through VIII.A.3.

VIII.A.1. Temporary Detention for Interrogation

The Select Commission recommends that statutes authorizing Immigration and Naturalization Service enforcement activities for other than activities on the border clearly provide that Immigration and Naturalization Service Officers may temporarily detain a person for interrogation or a brief investigation upon reasonable cause to believe (based upon articulable facts) that the person is unlawfully present in the United States.

Commission vote: Yes-14 Absent-1

VIII.A.2. Arrests With and Without Warrants

The Select Commission recommends that:

- Arrests, effected with or without the authority of a warrant, should be supported by probable cause to believe that the person arrested is an alien unlawfully present in the United States;
- Warrantless arrests should only be made when an INS officer reasonably believes that the person is likely to flee before an arrest warrant can be obtained;
- Arrest warrants may be issued by the Immigration and Naturalization Service District Directors or Deputy District Directors, the heads of suboffices and Assistant District Directors for Investigations acting for the Attorney General; and
- Persons arrested outside the border area without a warrant should be taken without unnecessary delay before the Immigration and Naturalization Service District Director, Deputy District Director, head of suboffice or Assistant District Director for Investigations acting for the Attorney General or before an immigration judge who will determine if sufficient evidence exists to support the initiation of deportation proceedings. With respect to arrests at the border, persons arrested without a warrant should be taken without unnecessary delay before an immigration judge or a supervisory, responsible Immigration and Naturalization Service official who will determine whether sufficient evidence exists to support the initiation of deportation proceedings.

Commission vote: Yes-14 Absent-1

VIII.A.3. Searches for Persons and Evidence

The Select Commission recommends that the Immigration and Nationality Act include provisions authorizing Immigration and Naturalization Service officers to conduct searches:

- With probable cause either under the authority of judicial warrants for property and persons, or in exigent circumstances;
- Upon the receipt of voluntary consent at places other than residences;
- When searches pursuant to applicable law are conducted incident to a lawful arrest; or
- At the border.

Commission vote: Yes-14 Absent-1

VIII.A.4. Evidence Illegally Obtained

The Select Commission recommends that enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.

Commission vote:
Should evidence illegally obtained be excluded in deportation cases?

Option 1. Enforcement officials using illegal means to obtain evidence should be penalized. The evidence thus obtained should not be excluded from consideration in deportation cases.

10 votes

Option 2. Provide by statute that court decisions relating to the admissibility in federal criminal cases of evidence illegally obtained shall apply to deportation proceedings.

3 votes

Absent-2

VIII.B. Right to Counsel

VIII.B.1. The Right to Counsel and Notification of that Right

The Select Commission recommends that the right to counsel and notification of that right be mandated at the time of exclusion and deportation hearings and when petitions for benefits under the INA are adjudicated.

Commission votes:
Should the right to counsel and a notification of that right, at least, be allowed at the time of exclusion and deportation hearings and adjudication hearings?

Yes-12 No-1 Absent-2

Should the right to counsel and a notification of that right be extended to any time after arrest or temporary detention?

Yes-7 No-6 Pass-1 Absent-1

VIII.B.2. Counsel at Government Expense

The Select Commission recommends amending the current law to provide counsel at government expense only to legal permanent resident aliens in deportation or exclusion hearings, and only when those aliens cannot afford legal counsel and alternative sources of free legal services are not available.

Commission vote:
Should the current law be amended to provide counsel at government expense only to lawful permanent residents in deportation or exclusion hearings and only when aliens cannot afford legal services and when there are no free services for legal services?

Yes-12 No-2 Absent-1

VIII.C. Limits on Deportation

VIII.C.1. Revision of Section 244 of the Immigration and Nationality Act

The Select Commission recommends that the words "extreme hardship" in Section 244 of the Immigration and Nationality Act be changed to "hardship." And that the reference to congressional confirmation of suspension of deportation be eliminated from this section.

Commission vote:
Should the words "extreme hardship" in Section 244 of the INA be changed to "hardship?"

Yes-11 No-1 Pass-1 Absent-2

Should the reference to congressional confirmation be eliminated?

Yes-9 No-4 Absent-2

VIII.C.2. Long-Term Permanent Residence as a Bar to Deportation

Commission Vote:
Should long-term, lawful permanent residence in the United States be a bar to the deportation of permanent resident aliens, except in the case of aliens who commit certain serious crimes?

Option 1: Retain present policy.

3 votes

Option 2: Bar institution of deportation proceedings against long-term permanent resident aliens who have committed deportable offenses (except in cases where heinous crimes are committed); bar the institution of deportation proceedings against permanent resident aliens who are under the age of 18 and have committed deportable offenses (except in cases where heinous crimes have been committed), regardless of the length of residence in the United States.

5 votes

Pass-5 Absent-2

VIII.D. Exclusions

VIII.D.1. Grounds for Exclusion

The Select Commission believes that the present exclusionary grounds should not be retained. The Select Commission recommends that Congress reexamine the grounds for exclusion set forth in the INA.

Commission vote:
Should the present grounds of exclusion be retained?

Yes-3 No-13

Should Congress reexamine the grounds for exclusion presently set forth in the INA?

Yes-13 Absent-2

VIII.D.2. Reentry Doctrine

The Select Commission recommends that the reentry doctrine be modified so that returning lawful permanent resident aliens (those who have departed from the United States for temporary purposes) can reenter the United States without being subject to the exclusion laws, except the following:

- Criminal grounds for exclusion (criminal convictions while abroad);
- Political grounds for exclusion;
- Entry into the United States without inspection; and
- Engaging in persecution.

Commission vote:
Should lawful permanent residents be subject to all of the grounds of exclusion upon their return from temporary visits abroad?

Option 1: Make no change in current law.

no votes

Option 2: Make no change in the existing law but suggest standards to interpret the Supreme Court's exception to the reentry doctrine which states that an "innocent, casual, and brief" trip abroad does not meaningfully interrupt one's residence in the United States and should not be regarded as a separate entry in the case of permanent resident aliens.

3 votes

Option 3: Eliminate the reentry doctrine entirely.

2 votes

Option 4: Modify the reentry doctrine so that returning permanent resident aliens (i.e., those who have departed from the United States for temporary purposes) could reenter the U.S. without being subject to the exclusion laws except the following:

a. Criminal grounds for exclusion (criminal convictions while abroad);
b. Political grounds for exclusion;
c. Entry into the U.S. without inspection; and
d. Engaging in persecution.

8 votes

Absent-2

SECTION IX. LANGUAGE REQUIREMENT FOR NATURALIZATION

The Select Commission recommends that the current English-language requirement for naturalization be retained, but also recommends that the English-language requirement be modified to provide a flexible formula that would permit older persons with many years of permanent residence in the United States to obtain citizenship without reading, writing or speaking English.

Commission vote:
Should the current English-language requirement for naturalization be changed?

Option 1: Eliminate the English-language requirement.

2 votes

Option 2: Retain the English-language requirement.

2 votes

Option 3: Retain the English-language requirement, but further modify it for older persons.

9 votes

Absent-2

SECTION X. TREATMENT OF U.S. TERRITORIES UNDER U.S. IMMIGRATION AND NATIONALITY LAWS

The Select Commission recommends that U.S. law permit, but not require, special treatment of all U.S. territories.

Commission vote:
How should the territories be treated under the Immigration and Nationality Act?

Option 1: Continue the present governmental situation: Puerto Rico, the Virgin Islands and Guam are fully covered by the INA; American Samoa and the Northern Mariana Islands are given special treatment.

1 vote

Option 2: Permit, but not require, special treatment of all the territories.

11 votes

Pass-1 Absent-2

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INTRODUCTION: A WORLD ON THE MOVE*

Immigration to the United States is an issue which cuts to the marrow of emotion and interest. So it has been since earliest history and in every subsequent period. That immigration and refugee policy should engender deeply held views and feelings is understandable when one thinks of what is at stake: the reunification of families, the saving of lives, the protection of jobs, the expression of values and ideals, and the future character of the United States itself.

But the United States is not the only country troubled by migration questions. Somalia, an extremely poor country of 3.6 million persons with a per capita income of only $130 in U.S. currency, cannot possibly feed more than 1.5 million refugees without international help. Sweden, long a homogeneous nation, is now troubled by questions of racial prejudice and discrimination. Great Britain, trying to cope with the influx of immigrants from former overseas colonies, has set up a three-tiered citizenship system. France, Germany and Switzerland would like to export their "temporary workers," now permanently settled with families, back to the countries from which they came. But the United States, if not unique with regard to migration problems, is distinguished from all other countries because of certain facts:

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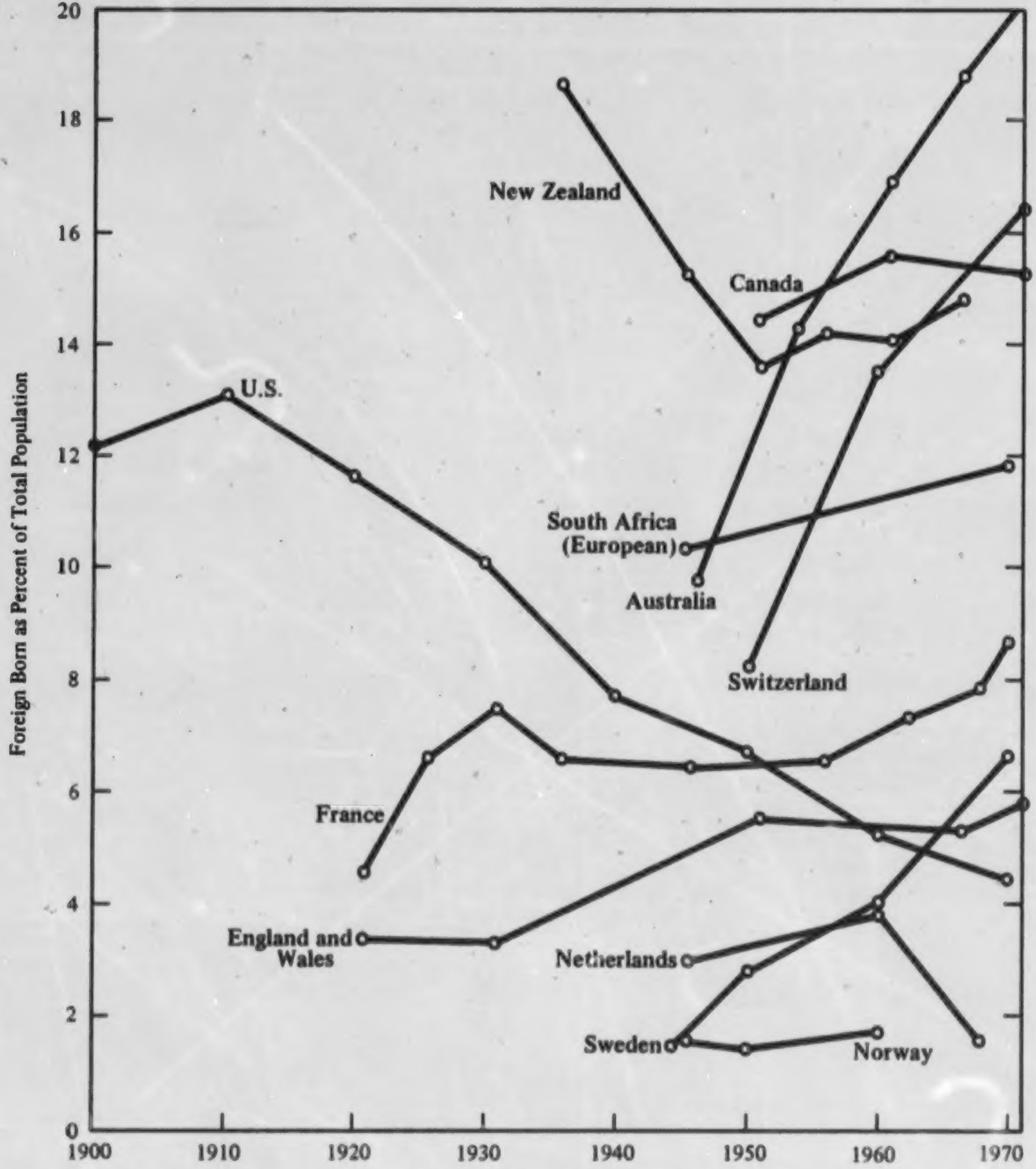
*Lawrence H. Fuchs, Susan S. Forbes, Nelle Temple, authors.

- It alone, among all the rich, large-scale receiving countries has a strong tradition of admitting immigrants and refugees;
- It is the only well-to-do receiving country that shares a long (2,000 miles) land border with a much poorer, developing country whose people face high rates of unemployment and underemployment; and
- It is the only such country that can be reached by sea in small boats from much poorer neighboring islands.

As a consequence of these factors, the level of migration to the United States, legal and illegal, has been much higher in the past decade than for any other country, although the proportion of legally admitted immigrants and refugees to Canada and Australia relative to their population has been higher. As may be seen from the table on "Foreign Born as Percent of Total Population, In Selected Countries, 1900-1970," eight other advanced industrial countries actually have a higher percentage of foreign born in their population than does the United States.

3

FOREIGN BORN AS PERCENT OF TOTAL POPULATION,
IN SELECTED COUNTRIES, 1900-1970



SOURCE: Based on chart in Kingsley Davis, "The Migrations of Human Populations," Scientific American, September 1974. Adapted with permission. Copyright © 1974 by Scientific American, Inc. All rights reserved.

The percentage of foreign born in the United States, counting only those who are here legally, actually has gone down sharply despite recent increases in immigrant and refugee admissions because of the low rates of admission during the 1930s, 1940s and 1950s. Only if the undocumented/illegal immigrants, now settled more or less permanently in the United States, were counted would the proportion begin to approach that of several other countries, as shown in the table on the preceding page.

Yet, the United States is disturbed by immigration. The very fact that so many come outside of the law or abuse their nonimmigrant visas is troubling in a nation which prides itself on respect for law generally, and for its legal immigration system specifically. Moreover, immigration to the United States--the admission of refugees, and legal and illegal migration--has gone up in recent years at precisely the time when an increasing number of Americans face economic uncertainty, are worried about the use of scarce and nonrenewable resources, and are concerned about their sense of themselves as a unified nation.

All of the letters and testimony presented to the Select Commission in the course of public hearings, site visits, and consultations clearly indicated the challenge facing this nation with respect to immigration. Most Americans are close enough to their own immigrant origins to be sympathetic to the idea of immigration. They want to continue a policy which enables the United States to do well by doing good. But they want to see immigration policy brought under control. They want to stop the flow of undocumented/illegal aliens into the United States. There are exceptions to that general position. A very small minority opposes a continuation of our admissions policy for immigrants and refugees. Another minority, some of whom agree with Pope John Paul that the right to migrate is a universal human right which transcends national boundaries, believe nothing should be done to stop illegal migration to the United States.

Troublesome Policy Questions

For the overwhelming majority who communicated their views to the Commission, the policy questions raised by immigration are troublesome and defy easy solutions:

- How can we enforce the law consistently, effectively and humanely? What should we do to stop the flow of undocumented/illegal aliens to the United States? What should we do about those who are already here? Should the United States try to channel or regularize future flows into a temporary worker program?

- How can we improve our immigration and refugee admissions policy? Should we continue to admit immigrants and refugees at about the same levels as in recent years or should we reduce or expand that number?
- How can we make it more equitable in relation to clear goals that serve the U.S. national interest as well as humanitarian needs? Should we change the criteria by which we select immigrants to the United States? Should we change the criteria by which we exclude individual immigrants who are otherwise admissible?

The Select Commission Responds

In answering these questions in its final report, the Select Commission was guided by three important principles: international cooperation, an open society and the rule of law.

- The United States, by itself, cannot solve the problems of transnational migration and must initiate and participate in international efforts to manage them better;
- Immigration policy and its administration should be governed by the rule of law which means, among other things, that the limits set for immigration should be enforced; and
- The United States should remain a society open to immigration, admitting a reasonable number of immigrants and refugees regardless of race, nationality or creed to the rights of our Constitution and the entitlements of our laws because it is in our national interest to do so.

More will be said about the application of these principles in Chapters I through III. But first it is necessary to describe the problems we face and our limitations in dealing with them.

Kinds of Migrants

Essentially, immigration is about people on the move, and about the conflicts and adjustments which such changes entail for them and those with whom they come in contact. People move for different reasons and, sometimes, combinations of reasons which are hard to sort out. But law and custom define different kinds of migrants partly in terms of their motivations.

Persons who intend to settle permanently are called immigrants or permanent resident aliens who, when they come to the United States, become eligible for citizenship in five years. Those who flee persecution or have a well-founded fear of persecution for racial, religious or political reasons are called refugees. Ordinarily, they are accepted and processed in another country, admitted conditionally and become eligible to adjust their status to that of permanent resident alien after one year. Asylees are defined the same as refugees, but they arrive in the United States without having first been processed as refugees in some other country. When they come in large numbers over a relatively short period of time, the United States then becomes a country of mass first asylum, a situation that became quite familiar to Americans in 1980 when large numbers of Cubans and a cumulative flow of Haitians came to south Florida. Nonimmigrant aliens come to the United States for a temporary period and a variety of special purposes as tourists, business travelers, students, temporary workers and other visitors.

While all of the above persons arrive in the United States within our laws, there are many who come outside of the law. These are the undocumented or illegal aliens who come to the United States:

- Without documents;
- Enter illegally by obtaining a visa fraudulently;
- Overstay the specified time of their nonimmigrant visas; or
- Otherwise violate the terms of their entry.

There is nothing new about these kinds of migration. They have occurred throughout much of our own history, and even as far back as biblical times:

- Independent Immigrants (Permanent Resident Aliens). Abraham is told by the Lord to leave his kindred and his father's house and to settle in a new land (Genesis 12:1).

- Family Reunification Immigrants (Permanent Resident Aliens). Ruth leaves her people to join her mother-in-law, Naomi (Ruth 1:16).

- Refugees. Jesus and his parents, Mary and Joseph, flee to Egypt because of fear of persecution by Herod (Matthew 2:13).

- Asylees. The Israelites established cities of refuge for asylees (Joshua 20:2, 9).

- Slaves. Joseph was sold to the Ishmaelites for 20 pieces of silver by Midianite merchants and was taken to Egypt to be sold again (Genesis 37:28).

- Nonimmigrant Aliens. Following the crucifixion of Jesus, the Apostles went as missionaries to such places as Macedonia, Cyprus, Syria, and Rome (Acts 16:10).

- Temporary Residents and Workers. Joseph's family left the land of Canaan with the thought of staying in the land of Goshen temporarily where they would be in charge of the pharaoh's lifestock (Genesis:7).

- Illegal Aliens. Joseph's brothers came into Egypt and were accused by him of being there as spies without legitimate purpose (Genesis:32).

Humanity on the Move[1]

Human migration is as ancient as life itself. Out of what may have been a common geographical beginning, humans dispersed and filled the habitable continents. Spreading first through Africa, Asia and Europe, men and women reached Australia and North America and South America more than 20,000 years ago. The earliest humans needed to migrate. Hunting animals and gathering food, they roamed the earth.

Later populations, having invented the implements and practices of settled agriculture, could establish sizeable permanent settlements and still survive. Permanent settlement was not always an option, however; civilizations of pastoral nomads like the Mongols continued to range over areas inhospitable to settled agriculture, often warring with settled groups in surrounding areas.

Conquest, trade, exploration and colonization have lured people to distant lands and forced some of the inhabitants of these lands to flee. Establishment and maintenance of ancient empires--Greek, Persian, Macedonian, Roman, Indian, Chinese, African and Inca--all involved substantial movements of soldiers, merchants, missionaries and slaves.

Some migrations were caused by great natural disasters. After the volcano erupted at Pompei in 77 A.D. and buried the city, those inhabitants who were lucky enough to escape fled to the surrounding countryside and some of them eventually resettled in other parts of Italy. In approximately 900 A.D., Indians living with in a highly developed agricultural community based on a complex system of irrigation in what is now Chaco Canyon, New Mexico experienced several decades of prolonged drought, causing thousands of them to resettle throughout the Southwest.

Other large-scale migrations were forced by great wars. In one of the biggest upheavals in history, hundreds of thousands fled the advancing armies of Genghis Khan and his successors from Mongolia as they marched in the twelfth and thirteenth centuries through what is now the Soviet Union, the Middle East and northern India, and on into eastern and western Europe.

After 1600 the nature and scale of long-distance migration began to change. The principal population shifts before this time had been group movements, military campaigns and conquests, involuntary displacement or enslavement of populations and the establishment of new colonies. These types of group movements persisted--native Americans were displaced, African slaves were transported to the Americas and European soldiers were sent to conquer and rule in Asia and Africa. But after 1600, the opening of new lands particularly in the Americas, Australia and New Zealand began a new era in migration dominated by movements of individuals and family groups.

Applications of technical innovations in Europe in the sixteenth and seventeenth centuries led to great voyages of discovery which heralded a new period of international migration. Astronomists worked with sailors to improve navigational devices; scientists and ship builders shared their findings and developed faster, more mobile vessels; new weapons made possible the conquest of new lands.

Technical innovations provided the means to migrate and a newly emerging political and economic climate gave Europeans of the sixteenth and seventeenth centuries the incentive to use them. The centralized sovereign nation-state developed at the same time as mercantile economies based on international trade. European monarchs, supported by the merchant class, consolidated the power that made colonialism possible. European merchants, whether Spanish, Portuguese, English, Dutch or French, encouraged both exploration and settlement of newly discovered areas. Overseas colonies, rich in natural resources and land, provided these merchants with new products, new markets and abundant wealth. And new settlers were needed to administer these colonies and to exploit their resources.

Those who joined the migratory flows hoped to derive their own monetary rewards. The New World in particular attracted adventurers who were seeking their fortunes. The Spanish conquistadors never found El Dorado, but they discovered an abundance of precious metals and stones. The English settlers of Virginia, also motivated by dreams of gold and silver, proved to be less fortunate until they discovered the wealth to be made from the cultivation of tobacco. A human source of wealth was found in Africa and fortunes were made from the slave trade. The spices and silks of Asia, whose pursuit had sparked the voyages of discovery, continued to attract those in search of riches.

Although adventurers paved the way, the backbone of the seventeenth-century and later migrations consisted mainly of ordinary people who were dissatisfied with the economic, political and religious conditions at home. Younger sons, faced with limited economic opportunity, sought advantage abroad. Imprisoned debtors and criminals from England earned their freedom by settling in the colonies; more prominent citizens were enticed by royal land grants. Some religious minorities, faced with persecution, sought freedom to worship as they pleased. The Pilgrims, for example, journeyed from England to Holland to worship in their own way and then left Holland because there was too much freedom around them, interfering with their control over their children. Political upheavals caused other movements, for example, when the Roundheads won the English Civil War and many of the losing Cavaliers came to the New World. From decade to decade and country to country, the specific circumstances propelling migrants varied, but the flows continued to mount.

By the nineteenth century a new round of technological innovation made it even easier to traverse vast distances. Clipper ships--the long, sleek, swift invention of New England shipbuilders--cut the trip from New York to California around the Horn from five months to three. Even these ships soon became obsolete. The less elegant but stronger, larger and faster steam vessels reduced the length of voyages from months to weeks and even days. The opening of the Panama Railroad in 1855, the Suez Canal in 1869 and the Panama Canal in 1914 further shortened the sea routes.

Both sea and land distances were dramatically affected by the transportation revolution of the nineteenth century. Canals and steamboats opened the Ohio Valley, and railroads permitted people and goods to move from the center of one continent to another. As railroads were built across the United States, vast new areas were opened for settlement. Germans, Austrians, and others from inland areas of Europe could take a train to a port, sail to the United States and then board another train bound for the American heartland. International trade also grew rapidly as transportation costs fell. Grain from America could now be sold more cheaply in some parts of Europe than locally produced grain.

These transportation improvements made migration far easier and far less dangerous than ever before at a time when the pressures to leave Europe were mounting. Population increased rapidly in Europe in the early nineteenth century as the death rate declined. Changes in industrial and agricultural technology were altering occupational opportunities, the main result being the displacement of people from the land. Suffering from successive potato famines and English persecution, the Irish fled to America. The European revolutions of 1848 led the political dissidents from Germany and Central Europe to do the same.

These events and others are included in the flow chart on "National and International Influences on U.S. Immigration," which describes migratory movements in relationship to other historical events from 1492 to the present. As can be seen on the chart, the United States had become the target for unprecedented migrations from Europe by the late nineteenth century. Bad harvests and competition from lower priced grain imports drove tens of thousands of farmers from England, Sweden and Germany to immigrate. Countries that had never sent migrants across the ocean now encouraged their citizens to emigrate. An Italian government report declared, that "immigration is a necessity. . . . It would be terrible if this safety valve did not exist, this possibility of finding work elsewhere."[2]

Failing peasant farmers from Austria-Hungary, unemployed agricultural laborers from southern Italy, Mennonites and Jews fleeing persecution in Russia all began to flock to the United States in the last decades of the nineteenth century. From 1901 to 1910, the peak decade for migration to the United States, 8.9 million immigrants arrived.

The spurs to immigration for these new immigrants were similar to those of earlier immigrants. Most of them--whether from Italy, Greece, Poland, Russia, Germany, China, Japan, the Philippines or Korea--came for better economic opportunities, to find work and to own land. Many believed, or at least hoped, that America's streets would be paved with gold. The Chinese called the United States the land of the golden mountain. Jews called America the golden land. Continuing their centuries-old Diaspora, some Jews came because of religious persecution, fleeing the pogroms of Eastern Europe.

While the United States was the main destination for migrants, it was not the only one. The British migrated to South Africa, Canada, Australia, India and farther east; the Germans tried to colonize Africa; the French established outposts in Algeria, Morocco and Tunisia; the Belgians went to the Congo; the Dutch settled in South Africa and Indonesia; and the Portuguese in Goa and Macao. Between 1820 and 1940 approximately 5.5 million immigrants settled in Brazil. The Argentine Constitution of 1853 declared that immigration would not be restricted and Spanish, Italian and French citizens found their way to Argentina. In Asia, the Chinese migrated to Indochina with the encouragement of the French colonial powers.

In 1889, the Chinese population of French Indo-China was 60,000; by 1906, it had doubled. Traders and indentured laborers from India and China moved to other European colonies in Southeast Asia, Africa and the West Indies. In fact, the Chinese fleeing poverty and seeking work left for Southeast Asian countries in such large numbers that by 1970 it was estimated they constituted 34 percent of the population of Malaysia, 30 percent in Cambodia and 15 percent in South Vietnam. More than 21 million Chinese expatriates lived in Asia outside of China, Taiwan, Hong Kong and Macao.

The Scale of World Migration in the Twentieth Century

Two world wars, a worldwide depression between them and the implementation of national retrictionist immigration policies --including that of the United States--combined to lessen the worldwide flow of voluntary migrants between 1914 and 1945. The number of refugees and other involuntary migrants, however, rose dramatically. The Russian Revolution of 1917 and its aftermath left about 1.5 million Russians in other parts of Europe and Asia. Large-scale expulsions and negotiated exchanges of population among Greece, Turkey, Bulgaria and Armenia occurred after World War I. The rise of dictatorships in Spain, Germany and Italy in the 1930s created new refugees. Over one million people, mostly Jews, fled from Germany during the rise of Nazism before World War II, and many more would have fled if democratic nations had been willing to receive them.

During and immediately after World War II, there were large population movements as ethnic minorities were exchanged, expelled or repatriated. Nation-building within realigned boundaries often brought about political efforts to oust ethnic minorities. Almost 20 million people in eastern and central Europe, including most of the ethnic Germans in eastern European countries, were moved as a result. Approximately 5 million Japanese were repatriated from other parts of Asia following the war.

The creation of new states as colonial powers withdrew from Asia, Africa and the Middle East also precipated huge refugee movements. For example, the partition of the Indian subcontinent in 1947 caused the frantic movement of about 12 million Hindus, Moslems and Sikhs in the space of one year, about half going from Moslem Pakistan to Hindu India and the other half in the opposite direction. The partition of Palestine in 1948 generated the movement of more than a half-million Arab refugees; and at least an equal number of Jews fled Arab countries to go to Israel at the same time. As colonial rule ended, about 200,000 Europeans returned to Europe from Asia; from Africa the movements back to Europe were much larger. Approximately 1.4 million French and Algerian settlers left for France with the granting of Algerian independence and about 300,000 Belgian technicians and settlers moved out of the Congo to return to Belgium.

A World on The Move: Refugees

Wars and revolutions in the last 30 years have continued to produce masses of refugees and displaced persons. In Asia, several million Kuomintang supporters left for Taiwan and Hong Kong after the communist victory in China in 1949; over 4 million Koreans fled from North to South Korea in 1950-53; perhaps one million Vietnamese went from North to South Vietnam in the 1950s; more than 800,000 Cubans have been accepted in the United States as refugees since the revolution in 1959; a temporary deluge of 10 million persons went from Bangladesh to India in 1971-72; the permanent relocation of over one million refugees from Vietnam, Laos and Cambodia has taken place since 1965 and another several thousand refugees have fled the most recent wave of fighting in Cambodia.

The latest wave of refugees has been produced by wars in Afghanistan and Africa. Pakistan has recorded more than 1.5 million refugees who have fled from the Soviet invasion of Afghanistan; Somalia has received more than 1.5 million refugees from Ethiopia, only a portion of the approximately 4 million refugees estimated to be in Africa.*

---

*While all of the above figures come from official sources and appear to be accurate, one has to be extremely wary of estimated gross refugee figures. The figure of 16 million is frequently used because it has been issued by the United Nations High Commissioner for Refugees, but it includes persons who already have been accepted for permanent resettlement, such as the Indochinese in the United States, Canada, Australia, France and the People's Republic of China. It may also include the children of refugees who have been born subsequent to the initial refugee migration, such as Palestinians born in Jordan, the Gaza Strip, Syria or Lebanon.

A World on the Move: Migrants Seeking Temporary Work

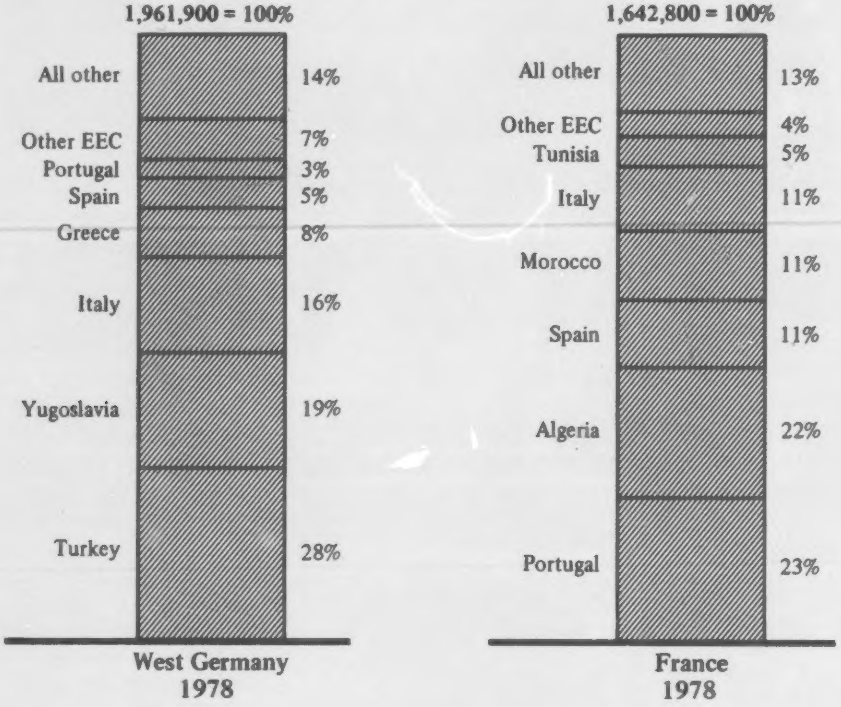
In the twentieth century as in the past, economic factors more than political ones have brought about the movement of people from one country to another. In the great nineteenth century migrations, most people who moved across national boundaries probably expected to settle permanently. Most of those who did not plan permanent settlement, such as the Chinese, Japanese or perhaps a majority of the Italians who came to the United States, eventually remained and raised their children in the new land. In recent years, partly because of restrictive immigration policies in countries that attract foreign workers, economically motivated migrants often have not been allowed to settle permanently. Like the contract laborers who came to the United States in earlier decades from China, Japan or the Philippines, contemporary migrants are "temporary workers" (sometimes called "guest-workers"), especially in Europe where they are expected to return to their poorer home countries after the completion of their work contract. Such temporary workers usually are discouraged from bringing along nonworking family members and from settling permanently, though many eventually succeed in doing so, as the Chinese, Japanese and Filipinos did earlier in the United States.

The motivation to seek work outside of one's country is frequently so strong as to lead to illegal migration. But in many cases, receiving countries, recognizing the needs or at least the desire for labor, have signed agreements with other nations to receive a steady supply of guestworkers. Germany signed its first formal guestworker treaty with Italy in 1955, and, during the 1960s, signed agreements with Greece, Spain, Turkey, Morocco, Portugal and Tunisia. France also signed agreements with many countries and, as can be seen in the tables on "Migrant Workers in Europe," a variety of foreign workers appear to have become a permanent part of the labor forces of both countries. In 1977, 25 percent of the labor force in Switzerland, more than 11 percent of that in France and over 9 percent in West Germany was made up of foreigners (see table on "Foreign Workers as Percent of Total Employment in Host Country, 1977") induce these workers and their families to return home.

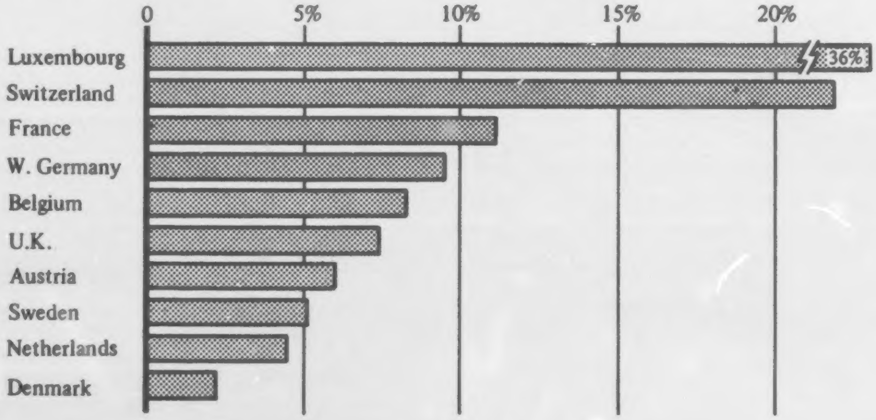
In recent years, the oil-rich countries of the Middle East have attracted foreign laborers. By 1975, almost half of the labor force of Saudi Arabia and Libya and more than two-thirds of those in Kuwait, Qatar and the United Arab Emirates consisted of temporary foreign workers.

MIGRANT WORKERS IN EUROPE

Origins of Migrant Workers in Two Major Receiving Countries



Foreign Workers as Percent of Total Employment in Host Country, 1977



SOURCE: "International Labor Migration," Economic Road Maps, The Conference Board, New York, November 1980. Reprinted with permission.

The United States had its own temporary worker program from 1942 to 1964, usually called the bracero program. Under it almost 5 million Mexican temporary workers came to the United States in an intensification of the previous historic flow of workers from Mexico to this country. Currently, the United States has a small temporary worker program, usually admitting no more than 30,000 persons a year, the principal sending country being Jamaica.

A World on the Move: Permanent Settlement

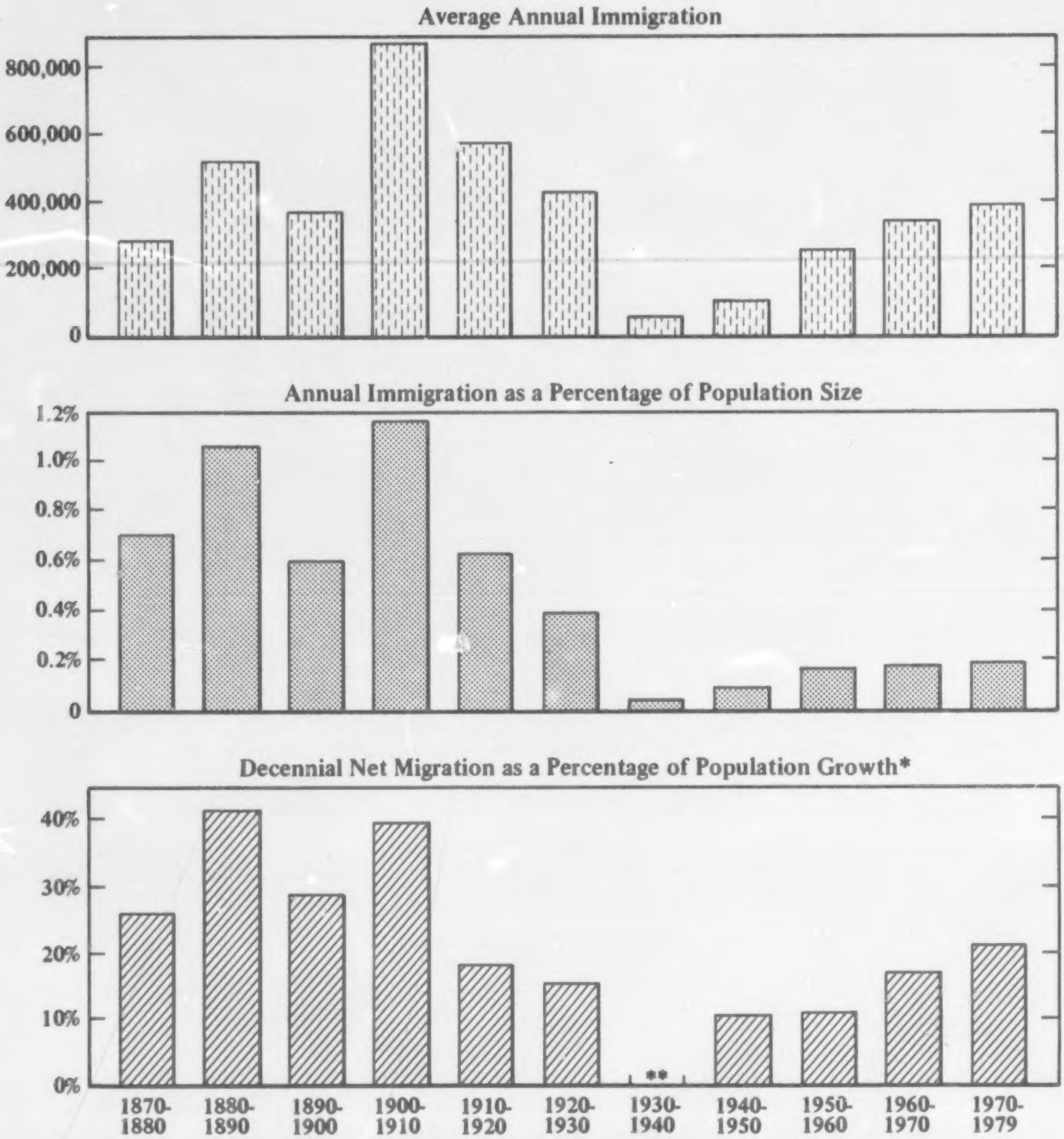
While refugees are in theory not permanent settlers, the majority of those who have arrived in the United States as refugees stayed permanently. While temporary workers by definition are not permanent settlers, a substantial minority of those who came as temporary workers to European countries have remained with their families as permanent settlers. Immigrants, on the other hand, intend to be permanent settlers. In the United States, they receive a resident alien green card which gives them the protection of all fundamental rights and most of the entitlements of U.S. citizens and affords them the opportunity to become an American citizen in five years. Yet, a substantial proportion of immigrants eventually leave the United States with rates of emigration in some years exceeding immigration and averaging approximately 30 percent of immigration throughout most of our history.

While the number of refugees and temporary workers who come within and outside the numerical limits on immigration have increased tremendously in recent years, the number of immigrants is lower than the worldwide totals of 80 years ago, when the United States alone admitted nearly one million persons a year. Still, permanent migration from Europe for economic reasons accounted for some 7 million persons who left the European continent between 1956 and 1970 for overseas destinations, principally Australia, the United States and Canada. The creation of the European Economic Community has stimulated migration within Europe, and Great Britain has received new immigrants from Commonwealth countries, especially India and Pakistan, and the Caribbean, beginning in the mid-1950s. Since 1968, with the abolition of national origins quotas and the liberalization of immigration limits, immigration to the United States has risen (see tables on "Levels and Rates of U.S. Immigration, 1870-1979" and "U.S. Gross Immigration, 1976-1981").

A World on The Move: Illegal Migration

But, as already indicated, the pressures from migration throughout the world are enormous and far beyond the willingness of potential receiving countries to accommodate through legal immigration. While Italians have sought and found work through temporary-worker programs in central and northern Europe, North Africans, Turks and others have illegally migrated to Italy for the same reason. Just as Mexicans cross the border to the United States in search of economic opportunity, both within and outside of the law, Guatemalans and Salvadoreans cross the southern Mexican border to find jobs in a more highly developed country as undocumented/illegal migrants. Trinidadians can be found working in New York City, having left a country that provides jobs for persons from Guyana or other poorer countries in the Caribbean. Millions of persons, finding it hard to enter another country legally, use illicit means of entry in order to support themselves and their families wherever they can cross borders or sea lanes easily, as Colombians do to reach Venezuela and as Paraguayans and Bolivians do to work in Argentina.

LEVELS AND RATES OF U.S. IMMIGRATION, 1870-1979

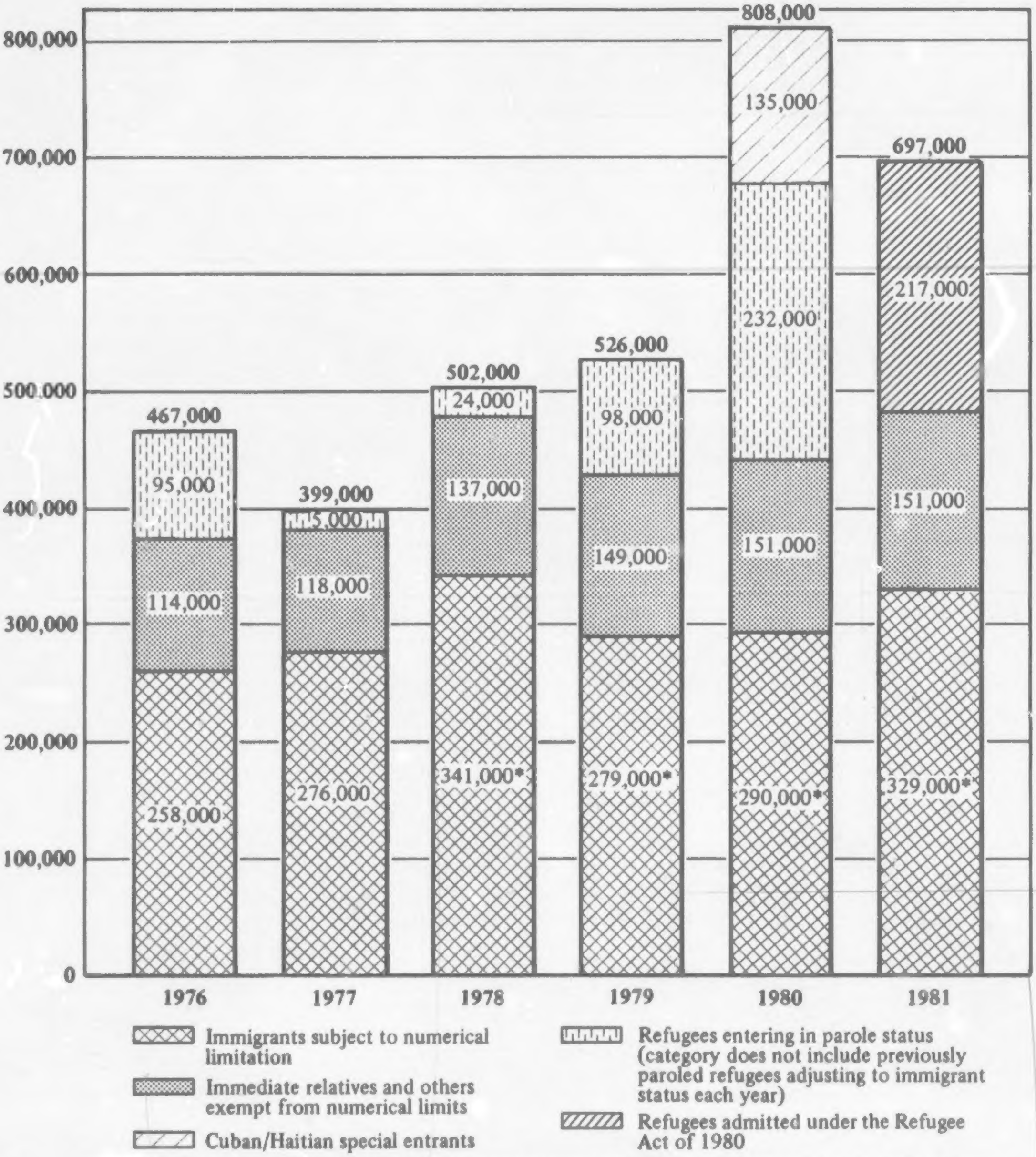


SOURCE: "Immigrants: How Many?", Select Commission on Immigration and Refugee Policy, January 1980.

*Decennial net migration as a percentage of population growth equals total decennial population increase minus natural population increase (births and deaths) divided by total population increase.

**Emigration exceeded immigration by 85,000.

U.S. GROSS IMMIGRATION, 1976-1981



SOURCES: U.S. Immigration and Naturalization Annual Reports, 1976-78 and unpublished INS data, 1979; INS reports of aliens paroled and special entrants admitted, 1976-80; State Department field visa issuance reports and projections based on previous totals in certain categories for 1980 and 1981.

* Includes part of the 145,000 extra numerically limited visas issued as a result of the Silva v. Levi court decision.

No one knows and it is impossible to know how many undocumented/illegal migrants there are in the world or even in the United States. It is estimated, however, that there may be as many as one million in Italy, a country which has always had high rates of emigration and no fewer than 3 to 6 million in the United States. When anxious to improve their lives, human beings will take great risks, especially to flee desperate poverty. But undocumented/illegal migration to the United States is not always the result of desperate plight. Perhaps as many as one-fourth of the undocumented/illegal aliens in the United States came to this country as tourists, students or in some other legitimate nonimmigrant channel. For them, the call to remain is the call for opportunity, for a better life and not for survival.

The Shrinking Globe

It is clear that the world is shrinking, not just becoming more crowded. It is shrinking because of radically new communication and transportation technologies. It is shrinking because of a rising global-village consciousness. And it is shrinking especially because men and women are curious, migrating creatures.

Footnotes

1. See Ainsley Coale, "The History of the Human Population," Scientific American, September 1977; Kingsley Davis, "The Migrations of Human Populations," Scientific American, September 1977; Franklin Scott (ed.), World Migration in Modern Times, (Englewood Cliffs, NJ: Prentice-Hall, 1968); W.R. Bohning, "Elements of A Theory of International Migration and Compensation," (Geneva: International Labour Organization, Migration for Employment Project, November 1978); and Leon Bouvier, Henry Shryock and Harry Henderson, International Migration Yesterday, Today and Tomorrow (Washington, D.C.: Population Reference Bureau, September 1977).

2. Commissarrato dell' Emigrazione, Bolletino dell' Emigrazione, (1904), p. 17, cited in Thomas Kessner, "History of Repatriation," paper prepared for Select Commission on Immigration and Refugee Policy (New York: Historical Consultants, 1980).

NATIONAL AND INTERNATIONAL INFLUENCES ON U.S. IMMIGRATION

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1492	Unification of Spain under Ferdinand and Isabella- -expulsion of Jews and Moors		Columbus's voyage of discovery begins European age of exploration
1534	English Reformation- -religious controversy induces migration of dissenters		
1565			Spanish colony- -St. Augustine, Florida
1607			First permanent English settlement in Virginia
1619			Forced migration of Black Africans to Virginia
1620			Pilgrims land at Plymouth, Massachusetts
1624			Dutch colony- -New Netherlands
1638	English Civil War begins		Swedish colony- -Delaware
1654			Jewish community- -New Amsterdam (Manhattan Island)
1681			German immigration to Pennsylvania encouraged by William Penn
1699			French settlement- -Louisiana
1717			Transportation of felons to Colonies authorized by English Parliament
1775		Battles at Lexington and Concord begin American Revolution	
1776	Steam engine invented- -industrial and transportation innovation	Declaration of Independence	
1780		George Washington elected president	
1788		American Constitution ratified	
1789	French monarchy overthrown by revolution		
1790		First population census- -U.S. population of 3.9 million	European origins of New Jersey citizens: English, Dutch, German, Scots, Scotch-Irish, Swedish, French, Finnish, Danish, Flemish, Walloon, Alsatian
1794			Act providing relief for refugees fleeing Santo Domingo revolution

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1795			Naturalization Act- -requiring declaration of intent, five-year residency, oath swearing attachment to Constitution, satisfactory proof of good character and behavior
1798	Napoleonic Era begins		Alien and Sedition Acts- -President may deport any alien whom he considers dangerous to U.S. welfare Naturalization Act- -applicant for citizenship must reside 14 years in United States, 5 in state where naturalization is sought
1800		Thomas Jefferson elected president	
1803		Louisiana Purchase doubles size of country	
1804		Lewis and Clark begin exploration of northwest	
1807	Steamboat invented		
1808		African slave trade ends	
1812	War of 1812 between United States and Great Britain; concluded by Treaty of Ghent, 1815		
1814	Locomotive invented		
1816		American Colonization Society founded to send free blacks to Africa; first colonists arrived in 1820	
1819		Financial panic	"Steerage Legislation" regulates accommodations provisions; sets minimum standards on transatlantic vessels; requires ship captains arriving from abroad to compile lists of passengers and to designate age, sex and occupation of each
1823		Monroe Doctrine- -sets out special relationship of Latin America and United States	
1825		Erie Canal completed- -opens west to easier settlement	
1830	Revolutions in France, Germany, Belgium, Poland	Era of Jacksonian Democracy begins	First wave of mass immigration- -Irish and German immigrants dominate; influx of Catholic immigrants results in surge of Protestant nativism

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1835		Five southeastern Indian tribes begin forced march to western Indian Territory	
1837		Financial panic and period of labor unrest	
1844	Western intervention in China and Japan	Trade treaty with China negotiated	
1845	Irish famine peaks	Mexican War begins	Native American Party founded
	European economic depression		
1848	Revolutions in France, Germany, Hapsburg Empire, Italy	Treaty of Guadalupe Hidalgo cedes Mexican lands to United States	
		Gold discovered in California	
1849			Supreme Court decision in Passenger cases declares that state laws providing for head taxes on all immigrants are unconstitutional
1850			Over 350,000 immigrants enter- -largest number to date
1853		U.S. population exceeds 25 million	Chinese immigrants arrive as contract laborers
1854		Trade treaty with Japan negotiated	
1856			Nativist activity leads to American (Know-Nothing) Party- -calls for restricted immigration
1860		Abraham Lincoln elected president	
1861	European political changes (emancipation of Russian serfs and unification movements in Germany and Italy) lead to increased mobility	Civil War begins	
1863		Emancipation Proclamation issued	
1864			Congress authorizes Immigration Bureau in State Department (bureau closed until 1868)
			Congress legalizes contract labor
1865		Civil War ends, reconstruction of South begins	
1867		Indians ordered by U.S. government to live on reservations, starting 23 years of rebellion	
1869		First transcontinental railroad completed	

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1870		United States becomes world's greatest steel producer	
1871		Period of labor unrest in Pennsylvania coalfields begins	
1873		Economic panic and depression	
1875			Immigration Act, the first national restriction of immigration, bans prostitutes and convicts
1876		Philadelphia Centennial Exposition	Supreme Court declares that all state immigration laws are unconstitutional because they represent a regulation of foreign commerce
1877		Nationwide industrial strikes	
1880		U.S.-China Treaty allows U.S. restriction of Chinese immigration U.S. population exceeds 50 million	Second wave of mass immigration begins- -central, southern and eastern Europeans dominate
1881	Tsar Alexander II of Russia assassinated; reactionary regime and pogroms lead to emigration	Federation of Organized Trade and Labor Unions founded (reorganized as American Federation of Labor in 1886)	
1882	Peak of agricultural failure in Europe		Immigration Act increases list of inadmissibles (those considered lunatics, idiots, convicts, likely public charges) and establishes head tax Chinese Exclusion Act bars Chinese laborers (repealed in 1943) Almost 800,000 immigrants enter- -largest number to date
1884		Third continental railroad completed	
1885		Nationwide industrial strikes	Alien Contract Labor Law (Foran Act) bars importation of contract labor; intended to end employers practice of importing large numbers of low-paid immigrants, thus depressing the U.S. labor market
1886	Internal combustion engine invented First Irish Home Rule Bill introduced, boosting Irish Nationalism	Anarchists, mostly foreign born, accused of causing Haymarket riot in Chicago Statue of Liberty dedicated	

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1887		Dawes Severalty Act (General Allotment Act) proposes breakup of Indian reservations- - Indians who accept grants of land given citizenship	American Protective Association, an anti-Catholic, nativist group founded
1888	Wihelm II becomes Kaiser of Germany		First Deportation Law authorizes deportation of contract laborers
1889		American Samoa becomes U.S. protectorate Hull House, a Chicago social settlement, founded by Jane Addams	
1890		Official closing of U.S. frontier United States ranks first among industrial countries	Castle Garden, major entry station since 1855, closes
1891	Famine and pogroms in Russia		Immigration Act increases inadmissible classes (those considered to have loathsome or contagious diseases, and polygamists, paupers and those guilty of moral turpitude); Act also authorizes deportation of illegal aliens Office of Superintendent of Immigration created in Treasury Department Ellis Island established as immigrant-processing center
1893		Economic panic and depression World's Columbian Exposition opens in Chicago	Boards of special inquiry established at ports of entry to hear cases of detained immigrants
1894-1896	Armenian massacres	Western railroads strike	Immigration Restriction League organized to fight open immigration
1896		In Plessy v. Ferguson, Supreme Court declares Jim Crow segregated "separate but equal" facilities constitutional	
1898	Dreyfus affair peaks- -example of anti-Semitic activity causing Jewish migration	Spanish-American War- -U.S. acquires Philippines, Puerto Rico, Guam; annexes Hawaii; supports Cuban independence	
1899-1900		Open door notes bring "Dollar Diplomacy" to China	

TE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
01		President William McKinley assassinated by anarchist believed to be immigrant	
		Platt Amendment allows United States to intervene in Cuba and to lease land for coaling stations	
03	Wright brothers fly first heavier-than-air plane	Hay-Bunau-Varilla Treaty- -Panama grants United States canal zone in perpetuity	**Immigration Bureau placed under Department of Commerce and Labor**
			Immigration Act increases inadmissible classes (epileptics, those who become insane within five years of entry or have had two attacks of insanity, beggars, anarchists and white slavers)
05	Russo-Japanese War and revolution in Russia cause more pogroms and large-scale emigration from Russia	United States assumes de facto regulation of Dominican Republic's finances, later regulated by treaty	**Japanese and Korean Exclusion League formed**
		Industrial Workers of the World founded	
06			**Naturalization Act makes English a requirement, provides for administrative reform**
07		Financial panic and depression	**Immigration Act increases inadmissible classes (imbeciles, feeble minded, tubercular, suffering from physical or mental defects affecting the ability to earn a living; those admitting crimes involving moral turpitude, women coming for immoral purposes, unaccompanied children under 16)**
			Dillingham Immigration Commission established
			1.3 million immigrants enter- -largest number in U.S. history
			Gentlemen's Agreement between United States and Japan restricts Japanese immigration
			123% more Italians emigrate than enter United States, in response to the depression
11		Triangle Shirtwaist Company Fire- -sweatshop conditions lead to deaths of 146 people (mostly women), many of them immigrants; focuses attention on employment conditions of aliens	**Dillingham Commission on immigration issues 41-volume report calling for restrictions on eastern and southern European immigration**

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1912-1913	Balkan Wars- -Turkey defeated by Bulgaria, Serbia, Greece and Montenegro; then Bulgaria defeated by Serbia, Greece and Romania		42,000 Greek-born volunteers answer call to arms in Greece; returnees to United States after war see themselves as permanent U.S. residents thereafter
1913		California law prohibits Japanese from owning land	
1914	First World War begins	Border clashes with Mexican revolutionary and peasant forces	
	Panama Canal opens	Ford Motor Company mass produces automobiles on assembly line	
1915	Mexican Revolution	U.S. population surpasses 100 million	Immigration falls to 326,000; emigration from United States is 204,000
	Armenians slaughtered by Turks	New Ku Klux Klan founded	
		U.S. troops occupy Haiti (1915) and Dominican Republic (1916)	
1917	Russian Revolution; Lenin assumes control in November	U.S. purchases Virgin Islands from Denmark	Immigration Act establishes literacy as basis of immigrant entry; increases inadmissible classes (those considered to have constitutional psychopathic inferiority, men entering for immoral purposes, chronic alcoholics, stowaways, vagrants, those with one attack of insanity); Asian exclusion affirmed
		U.S. enters World War I	
		Wartime hysteria leads to restrictive legislation (Espionage Act and Trading-with-the-Enemy Act) and discrimination	
		Jones Act grants U.S. citizenship to Puerto Ricans, and promises eventual independence to Philippines	
1918			Anarchist Act provides for deportation of alien radicals; about 250 deported
			Passport Act prevents arrival or departure without authorized documents; nonimmigrant aliens required to obtain visas; overseas screening of aliens for visas
1919	Treaty of Versailles ends World War I; U.S. rejects treaty	Series of strikes by clothing and textile, railroad, telegraph and telephone, and steel workers begins; race riots	
	Russia organizes Third International to bring about world revolution		

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1919-1920		Period of isolationism; Palmer raids (Red scare), resulting in mass arrests and deportation, begin decade-long xenophobia	Deportation Act provides for deportation of those convicted of espionage and certain wartime offenses
		Recession	Nearly 1,000 Communists deported, many of them illegally
			Immigration from Europe resumes at high rate
1921	Irish Free State established, culminating Irish nationalist movement	Sacco-Vanzetti case begins six years of worldwide protest and raises questions about anti-Italian sentiment	First Quota Law limits annual immigration to 3% of national origin of foreign born in United States in 1910; European immigration limited to 355,000 per year--55% from northeastern Europe and 45% from southeastern Europe
1922	Rise of fascism in Italy; Mussolini opposes temporary emigration of Italians and provides employment at home		
1924		Citizenship Act of 1924--all Indians born in United States declared citizens	National Origins Act, to become fully effective in 1929, assigns quotas to each nationality in proportion to its contribution to the existing U.S. population, based on 1920 census. (As an interim measure, reduces annual quota to 2% of national origin of foreign born in United States in 1890, nearly eliminating immigration from central and southern Europe). Other provisions: aliens ineligible for citizenship excluded; total quota of 150,000, plus unlimited entry by Canadians and Latin Americans; U.S. consuls abroad to issue visas; avowed aim of act is to maintain the "racial preponderance [of] the basic strain on our people."
1927	Lindbergh's transatlantic flight		
	Stalin consolidates power in Soviet Union		
1928		Al Smith's defeat for presidency linked to anti-Catholicism	
1929	Worldwide depression	Economic depression in United States begins	National origins quotas now to be computed according to national composition of entire U.S. population in 1920, based on 1920 census

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1932			Total emigration exceeds total immigration by 290%; immigration reaches lowest level since 1831
1933	Hitler comes to power Mexican nationalization of U.S. and British petroleum reserves and companies	President Franklin D. Roosevelt launches New Deal programs and Good Neighbor Policy	Repatriation of Mexican illegal migrants from southwestern United States
1934		Indian Reorganization Act	Philippine Independence Act restricts immigration to 50 Filipinos a year
1938			Congress defeats refugee bill to rescue 20,000 children from Nazi Germany (despite availability of sponsors) because of national quotas
1939	First commercial transatlantic air service World War II begins		
1940			Immigration Service transferred from Department of Labor to Department of Justice to increase control over immigrants and aliens Alien Registration Act (Smith Act) requires registration and fingerprinting of aliens and increases grounds for deportation
1941		U.S. entry into World War II	
1942		Japanese Americans placed in relocation camps	Bilateral agreements with Mexico, British Honduras, Barbados and Jamaica for entry of temporary workers (bracero program) Chinese Exclusion Laws repealed
1945	World War II ends; Soviet Union begins takeover of Easter European satellites. United Nations Charter signed		
1946	Philippines granted independence		Congressional Reorganization Act eliminates House and Senate Immigration committees, assigning all immigration matters to Judiciary committees War Brides Act facilitates immigration of foreign-born spouses and children of armed services personnel
1947	UN divides Palestine into Arab and Jewish states	Truman Doctrine	

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1948	Partition of India and Pakistan	Marshall Plan passed Fair Deal programs enacted	Displaced Persons Act provides for entry of 341,000 refugees displaced by World War II; 378,600 displaced persons and German expellees arrive during 4-year program
1949	Fall of Nationalist China to the Communists	Short-term recession Point 4 program of technical assistance to underdeveloped countries	
1950	Korean War begins	U.S. population surpasses 150 million	Internal Security Act increases grounds for exclusion and deportation of subversives; aliens required to report their addresses annually
1952			Immigration and Nationality (McCarran-Walter) Act codifies immigration and naturalization statutes, national origins provisions retained; no limitations on Western Hemisphere immigration; preference system established
1953	East German rioters attacked by Soviet tanks	McCarthyism at its peak Short-term recession	Refugee Relief Act admits over 200,000 refugees outside existing quotas
1954	Series of Latin American revolutions begins	Supreme Court orders school integration, overturning Plessy v. Ferguson "separate but equal" doctrine Resurgence of civil rights movement	Operation Wetback removes one million Mexican aliens from Southwest; causes many civil liberties violations
1956	Soviets crush Hungarian Revolution Suez Canal crisis Poznan riots		U.S. accepts 21,500 Hungarian refugees, some of whom are under parole authority given to president under INA Under bracero program, 432,000 temporary workers admitted in one year
1957	Soviet Union launches Sputnik, first man-made satellite	Short-term recession Civil Rights Act	Refugee-Escapee Act defines refugee-escapee as any alien who has fled from any communist area or from the Middle East because of persecution or the fear of persecution on account of race, religion or political opinion
1958			Hungarian refugees permitted to adjust status to permanent resident alien Visas made available to nationals of Netherlands displaced from Indonesia, and to Portuguese unable to return to Azores because of volcanic eruptions

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1959	Castro comes to power in Cuba	Alaska and Hawaii achieve statehood	
	African independence movements gain momentum		
1960		John F. Kennedy elected first Catholic president	**Refugee Fair Share Law codifies various previous acts and provides ongoing mechanism for admission of refugees**
		Short-term recession	**Cuban refugee program established in response to refugee flow from Cuba**
1961	Berlin Wall erected	Peace Corps established as part of New Frontier program	
	Trujillo overthrown in Dominican Republic	Alliance for Progress goals approved at Inter-American Conference	
		U.S. spacecraft piloted by Lt. Col. John Glenn orbits the earth	
1962	Cuban missile crisis ends with Kennedy-Khrushchev agreement		
1963		200,000 civil rights advocates march on Washington, D.C.	
		John F. Kennedy assassinated	
1964	Duvalier becomes lifetime president of Haiti	U.S. combat troops sent to Vietnam	**United States ends bracero program**
		Lyndon B. Johnson elected president; calls for war on poverty to achieve Great Society	
1964-1965		Race riots in large U.S. cities and civil rights demonstrations begin	
		Voting Rights Act	
1965		Civil Rights bill passed	**Immigration Act repeals national origins provisions; creates annual Eastern Hemisphere ceiling of 170,000 with annual per-country limit of 20,000; new preference system with labor clearance requirement; Western Hemisphere ceiling of 120,000 with no country limitations or preference system, but with labor certification requirement**
1967		Demonstrations protesting U.S. military involvement in Vietnam	
		Civil Rights Act	

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1968		Martin Luther King assassinated National Advisory Commission on Civil Disorder warns of "two societies, one black, one white- -separate and unequal"	
1969		U.S. astronauts land on the moon	
1970	Gomulka regime resigns in Poland following food-shortage riots	U.S. invades Cambodia	Provision made for nonimmigrant alien entry of American citizens' fiancees and fiances and of intercompany transfers
1971			House of Representatives holds hearing on illegal aliens
1973		U.S. fighting in Vietnam ends	
1974	Rise in OPEC oil prices	Recession	
1975	South Vietnam and Cambodia fall to Communists		Indochinese Refugee Resettlement Program begins; over 200,000 Indochinese refugees enter under parole authorization; provisions made for adjustment of status to permanent resident alien; refugees exempted from exclusion provisions relating to labor certification, public charge, literacy requirements, and others
1976			Immigration and Nationality Act extends per-country limitation of 20,000 and preference system to Western Hemisphere Health Professional Education Assistance Act restricts entry of foreign medical graduates INS apprehends one million illegal migrants
1978	Vietnam encourages emigration of dissidents and ethnic Chinese by boat and land Economic summit conference in Bonn agrees to combat worldwide unemployment		Worldwide Ceiling Law combines Eastern and Western quotas creating a worldwide ceiling Amendment to waive illiteracy for naturalization purposes for aliens over 50 years of age who have 20 years residence Law Excluding and Deporting Nazi Persecutors enacted Select Commission on Immigration and Refugee Policy established

DATE	WORLD EVENT	U.S. EVENT	IMMIGRATION EVENT
1980			Refugee Act allocates [illegible]0,000 visas for "normal-flow" refugees and permits the president, after consultation with Congress, to increase the annual allocation
1981			Select Commission on Immigration and Refugee Policy submits final report to Congress and the president.

PART I: FIRST PRINCIPLES OF IMMIGRATION REFORM

CHAPTER I: FIRST PRINCIPLES OF IMMIGRATION REFORM--INTERNATIONAL COOPERATION*

The world of jet planes, instantaneous satellite communication and interlocking economies fosters and requires mobility. Tourists, students, businesspersons and other nonimmigrants--persons who do not intend to settle in the United States--are on the move. The United States received more than 11 million nonimmigrant aliens in 1979 compared to less than 5 million in 1968, and 1980 was the first year in which more tourists came to the United States than U.S. citizens visited abroad. In addition, every year over 100 million persons cross the Mexican border and 50 million cross the Canadian border to sojourn temporarily in the United States on short-term border-crossing permits. Most nonimmigrants travel expeditiously between countries and many nations do not even require a visa from persons holding a U.S. passport who enter to do business or as tourists.

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Those who seek more permanent participation in the life of another nation face many more obstacles than temporary travelers do. Freedom to emigrate is generally regarded in the western world, although not in the Soviet Union, as a basic human right. But freedom to immigrate is decided by the receiving nation and unrestricted and unregulated immigration is incompatible with the concept of the modern nation-state.

The sheer magnitude of actual and potential movements between countries in the twentieth century has led nation-states to exercise ever more restrictive immigration policies at the same time that the need and desire for migration has been mounting. Nation-states have responsibilities to their citizens, and most have felt that control over immigration and labor force participation by foreigners is a fundamental necessity and prerogative of sovereignty. The Select Commission, in its own deliberations, recognized the need to restore credibility to U.S. immigration policy by regaining control over it.

But the Commission also recognized that the world situation throws into serious question whether any nation can respond through domestic policy alone to what is clearly a problem that transcends national boundaries. That migration--like food, energy and arms control--is an international problem does not mean, of course, that nations will respond to it through international action.

One thing is certain, however. Migration problems will not go away. They can only become worse unless nations learn to cooperate in dealing with them.

It is mainly poverty and the perception of a better chance elsewhere that cause migration pressures to mount in a world which will add 2 billion people to the current population of 4 billion over the next 20 years. Yet, it is clear that migration is not a general cure for the political and economic troubles of the world. Even the vast numbers of migrant workers and refugees in the world today, perhaps as many as 50 to 100 million including family members, are only one to two percent of the world's population.

Moderating migration pressures in today's world will require a sustained, long-term cooperative effort by many nations to reduce the tremendous disparities in opportunity which exist among nations. Such a cooperative effort will involve actions in the areas of trade, investment, monetary policy, energy, development finance, human rights, education, agriculture and land reform. These actions will promote the productivity of poorer countries, give their people hope for the future, and work for peace, in addition to acting directly on migration.

Some of the actions necessary to improve the economic conditions of people in their home areas must be initiated by the richer nations, including the United States. The poorest nations continue to need substantial foreign aid and technical aid simply to establish the basic elements of productive societies: educated, healthy populations and minimal capital infrastructures. Better-off developing nations need to be able to sell their goods more freely in richer countries, so they can earn their way in the world economy. They also continue to need some foreign financing for their development programs. Certain essential actions, such as land reform, population programs and the extension of freedom are tasks that must be undertaken in the poorer nations themselves. Others, like the establishment of international food reserves, will depend on regional or global agreements.

Unfortunately, the precise relationships of aid, investment and trade strategies to the reduction of migration pressures is not clear from the research done for the Select Commission.[1] One important benefit from a large-scale legalization or amnesty program for the United States would be the precise information it will give on the sources and characteristics of undocumented/illegal aliens now in the United States. Such information will enable this country to target its aid and investment policies much more precisely in order to reduce migration pressures in towns and villages that in the past decade have sent many persons illegally across the U.S. border.

Another complication in achieving international cooperation is that the economic problems of most nations seem to be intensifying at the present time. To an enlightened leadership, that fact can be a challenge as well as a burden. New approaches to the problems of an interdependent world where domestic and international affairs are ever more linked are clearly necessary. Progress is difficult, but not impossible. The record of the past 25 years shows that dramatic reductions in population growth rates, increases in agricultural and industrial production, and adequate living standards result in even the poorest countries when local commitment and foreign assistance are effectively combined.[2]

Our Regional Neighbors

The Select Commission concluded that the United States has a responsibility for instituting cooperative action with other nations to reduce migration pressures and to better manage migration flows. In the North America-Caribbean Basin area, economic interdependence among nations is already high. About two-thirds of the import and export trade of Canada and Mexico is with the United States. More than one-quarter of the foreign trade of the United States is with its regional neighbors in North America and the Caribbean Basin. Most of the temporary-labor migration, legal and illegal, is also from nearby countries. These facts of economic interdependence have led some observers to believe that a formal North American Common Market, perhaps along the lines of the European Economic Community, may eventually be a desirable way to build on present realities and to maximize future economic growth in the region. One need not, however, project such a futuristic scenario to see that there are areas of trade and migration policy that would enable the nations of the region to gain from closer cooperation.

Throughout the past 20 months, the staff of the Select Commission has paid particular attention to United States-Mexico relations and has sought to understand the history of these relations, the natural ecology and economy of the southwestern border, and the evolution of biculturalism in states along that border.

It is clearly in the interests of the United States that its great neighbor to the south prosper as a nation and continue as a stable democracy. At the present time, immigration from Mexico plays a role in the important social and economic development plans of that country. By slightly increasing immigration levels, by instituting its legalization program, by abolishing per-country ceilings for spouses and minor children of U.S. resident aliens and by clearing existing backlogs the United States will facilitate increased legal immigration from Mexico. But it is not possible to meet the demand for immigration from Mexico and also remain an open society for other countries without going to immigration levels well beyond what most Americans would be willing to absorb.

Commissioners were well aware that effective measures to curtail the flows of undocumented/illegal aliens to the United States may be disruptive to Mexico and other countries, too. But they were also aware that illegal migration is not just a problem with Mexican nationals and that the United States, while ready to cooperate with other nations, cannot ignore the need to uphold the law for its own society and to protect the rights of aliens who abide by the rules.

Eventually, perhaps, the United States, Canada and Mexico will sign agreements that will provide for free-trade zones and the free movement of persons across borders, but that time clearly has not come from the point of view of Mexico, Canada or even the United States. The question is how to get there. The United States must make its immigration policy clear and enforce it consisently and firmly, without walls or barbed wires at the borders, while cooperating with other nations to alleviate migration pressures.

Toward that end, the Select Commission, in its final report, made several recommendations. Among them were:

- The United States should enter into bilateral consultations on migration with other governments in the Western Hemisphere, especially Mexico and other regional neighbors;
- It should initiate discussions to promote regional cooperation on trade, aid, investment and other aspects of development to help reduce migration pressures at their source; and
- It should explore additional, cooperative methods for enforcing the immigration laws of various nations, of ensuring regional cooperation in the protection of the human and labor rights of aliens, and it should explore the possibility of negotiating a regional convention on forced migration and of establishing a regional authority to arrange for the permanent and productive resettlement of asylees who cannot be repatriated to their countries of origin.

World Cooperation

In addition to the problems caused by the search for economic opportunity, refugee and asylee problems may grow as a result of the great political turbulence in the Western Hemisphere. There is now widespread (though not universal) agreement on the principles of asylum for political refugees. The United Nations High Commissioner for Refugees and other public and private agencies are available to respond to refugee emergencies, given adequate funding and political support.

But they are not sufficiently capable of dealing with questions of mass first asylum and too much of a burden is imposed on those countries which face the responsibility of protecting, maintaining and resettling those who come to them as asylees or refugees. Possibly new regional mechanisms can be developed to supplement the efforts of the U.N. High Commissioner.

World organizations have just begun to deal with the problems of international economic migration. The Organization for Economic Cooperation and Development collects statistical data from member governments and also has commissioned studies on the effects of migration on nations in Europe and the Mediterranean basin. The International Labor Organization also conducts research and has developed several conventions and recommendations dealing with the protection of the rights of migrant workers. As yet, only a handful of countries have ratified these conventions. The United States, while exploring the possiblity of regional mechanisms to undertake comparable work, should also take the lead in fostering international cooperation on a wider scale to anticipate, forestall and manage international migrations. The Select Commission made recommendations along those lines since, it concluded, that no nation can do it all alone.

Footnotes

1. For example, see U.S. Department of State, Agency for International Development/ International Development Cooperation Agency, "Impact of Development Assistance Trade and Investment Programs on Migration Pressures in Major Sending Countries," paper prepared for Select Commission on Immigration and Refugee Policy (Washington, D.C: U.S. Deparment of State, 1980); Larry Neal, "Interrelationships of Trade and Migration--Lessons from Europe," paper prepared for the Select Commission on Immigration and Refugee Policy (Urbana, IL: Office of West European Studies, University of Illinois at Urbana-Champaign, August 15, 1980); Louka T. Katseli-Papaefstratiou, "Trade Flows and Factor Mobility," paper prepared for Select Commission on Immigration and Refugee Policy (New Haven: Yale University, August 1980) and Nelle W. Temple, "Migration and Development: A Preliminary Survey of the Available Literature," paper prepared for Select Commission on Immigration and Refugee Policy, (Washington, D.C.: Overseas Development Council, July 1980).

2 David Morawetz, Twenty-Five Years of Economic Development, 1950-1975 (Baltimore: Johns Hopkins University Press, 1977).

CHAPTER II: FIRST PRINCIPLES OF IMMIGRATION REFORM-- THE RULE OF LAW*

While the staff report, aside from this introductory chapter does not attempt to develop the Select Commission's recommendations on international questions, considerable attention is paid in the following pages to certain recommendations which came from the Select Commission's preoccupation with the rule of law as a guiding principle for U.S. immigration policy. The emphasis on the rule of law, as spelled out in the Select Commission's final report, means essentially two things: first, enforcement of the law and, second, a clear understanding of the rights and responsibilities of those who come in contact with it.

Enforcing the Law: What should the United States do to stop the flow of undocumented/illegal aliens to the United States?**

There was by no means unanimity about the issue of undocumented/ illegal aliens. The Commission heard from persons who insisted that undocumented/illegal aliens fill jobs that Americans will not take, and pay social security and other taxes without receiving comparable benefits and, therefore, do not constitute a serious problem. The testimony of Governor Bruce Babbit of Arizona represents this view:

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*Lawrence H. Fuchs, author.

**Part III deals at greater length with this most troublesome question.

> Over the years, these illegal migrant workers have become an integral part of the life and economy of the southwestern states. . . . [They are] generally law-abiding, religious, family-oriented, productive people who have entered this country for the same reason as our own ancestors--to work their way to a better life for themselves and their children.
>
> These illegal migrant workers pay taxes and contribute to social security which they will probably never receive. Generally, they are not heavy users of welfare and social services. Many of us in the Southwest would agree with President Carter's statement that "through work they contribute much and require little from the host society.[1]

In addition to the view expressed by Governor Babbit, others argued that it is impossible to prevent persons from migrating to the United States outside of the law because of the enormous traffic of students and tourists through this country, the tremendous push and pull factors which stimulate migration from poorer countries, and the great extent of U.S. coastal and land borders.

On the other side, the Commission heard from those who believe that illegal migration imperils the well-being of the United States, creating an underclass whose very existence as a fugitive group outside of the protection of many U.S. laws harms competing workers, results in educational and health problems, encourages criminal activities against them and undermines fairness in our immigration policy. Such persons usually call for new, more stringent enforcement measures to curtail the flow of illegal migration.

Supporters of such measures usually ask for an employer sanctions law to make it illegal to hire undocumented aliens who are in the United States. They insist that it is the only way to demagnetize the attraction of available jobs for persons who come to the United States outside of our legal immigration system. They maintain that there are available employee identification systems that are reliable, cost-effective and that will provide better protection of U.S. civil rights than those available at the present time. As noted in a New York Times editorial:

> It is not more sensible to reject the identification idea because of political problems than to ban telephones because they can be tapped.[2]

And, as this statement in a Los Angeles Times editorial indicates:

> We favor a forgery-proof social security card for all residents of this country--one that would be shown only at a time of employment and that would quickly confirm the applicant's legal status. Without such identification, it would be impossible to enforce another necessary element of a rational immigration policy--criminal sanctions against employers who knowingly hire illegal immigrants, and all too often, exploit their vulnerability to deportation.[3]

Opponents of an employer sanctions law maintain:

- That without a reliable means of worker identification it cannot possibly work;
- An identification system applied only to aliens would inevitably lead to discrimination of citizens and resident aliens who look or sound foreign;
- A universal means of identification for all workers would intrude on the lives of many Americans and be costly.

It is also argued that any system which aims at reliability must use employers to enforce the law and may lead to the abuse of American liberties by the government. In a policy statement submitted to the Select Commission, the American Friends Service Committee explained:

> No matter what the appeals procedure or antidiscrimination rules might be, one group of the population would have to go through more difficulties to get a job than others. . . . The use of employer sanctions would most likely require issuance of a national identity card for all citizens. Such a measure is repugnant to our traditions and is a high price to pay for the doubtful benefits it might bring.[4]

Enforcing the Law: Should the United States try to channel or regularize future flows into a temporary worker program?

Many persons who are skeptical about the feasibility of new enforcement measures testified that there is a way to channel or regularize the flow of undocumented/illegal aliens in the future. They argue that it should be possible to take a substantial proportion of those who are already in the United States and others who would come in subsequent years and eliminate their undocumented/illegal status by providing them with short-term opportunities for work in the United States. Following the conclusion of such employment, these workers would return home to Mexico and the other countries from which they come. The exponents of a large-scale temporary foreign worker program, as seen from the comments below, present the argument that the desire of American employers for workers makes a perfect match with the need of unemployed and underemployed persons in Mexico, Central America and other neighboring countries in the Caribbean Basin who wish to work temporarily in the United States. In a letter to the Select Commission, the American Farm Bureau Federation wrote:

> If all or any major portion of the undocumented aliens now in this country were to be deported, or if the availability of temporary foreign workers were to be cut off, the production of many agricultural commodities would be severely hampered or brought to a halt in major production areas.[5]

At the Select Commission's public hearing in San Francisco, Senator S.I. Hayakawa testified:

> The H-2 temporary worker program . . . simply is not adequate, or there would be no undocumented workers here. The workers would not be hired if they could not get jobs, and they would not have jobs if they were not needed as workers--sometimes desperately needed. . . . Unlike the Bracero Program, the workers who come to the United States under this legislation will be free to choose their place of employment and employer, the only restriction being the specific work sites which the Attorney General can declare off limits. . . . Building fences, finding employers, increasing border controls, even granting amnesty will not deal with the reality of the situation.[6]

From opponents of a guestworker program the Commission heard of the negative consequences such a program would have on U.S. workers--displacement of some and the erosion of wages and standards for many--and the long-term social and political problems which these programs entail. Experience shows that among workers who intend to stay temporarily many decide later to remain in violation of the law, and even those who return often stimulate new pressures for migration in their home countries, as noted by Alberto Saldamando in testimony presented at the Select Commission's public hearing in San Francisco:

> Guestworker programs have done nothing to stem this tide. . . . Senator Hayakawa's bill would replace the coyote (smuggler) with the Attorney General. He abandons the rationale for manpower shortages and calls it, happily, a companero program. . . . A worker could be told not to seek work in olives--or to only seek work in olives. But that would not guarantee that the worker would not find a job in an automobile plant or in a restaurant or anywhere else or even in olives . . .[7]

Enforcing the Law: What should we do about undocumented/ illegal aliens who are already here?

Many persons who are opposed to a guestworker program and many who are for it testified or wrote that there should be some kind of amnesty or legalization program for the undocumented/illegal aliens now in our country. Those who support a large-scale guestworker program would incorporate the present group of undocumented/illegal aliens into that program, while those who are opposed to a large expansion of the temporary-worker concept tend to urge an extension of resident-alien or immigrant status to a substantial portion of the undocumented/illegal aliens now in the country. Some persons are for a combination of both programs.

Proponents of legalization argue that it would be impossible to apprehend more than a small fraction of those who have been here for some time, are employed and wish to stay. Even an employer sanctions law, which will not be fully effective for seven years, will be enforced only for new hires and not targeted on the smallest businesses. They further maintain that mass deportation efforts through neighborhood sweeps would not only violate the liberties and rights of many persons including citizens but would prove ineffective.

Thus, they suggest, a large underclass of undocumented/illegal aliens would remain, many of whom have been in the United States for several years, resulting in negative effects on U.S. labor standards and the well-being of other Americans. A report in Business Week noted:

> What is needed is an immigration program that can change in response to changing economic and social conditions. The first step in such a policy should be to regularize the status of the six million illegal aliens already here. It makes no sense to track them down and return them to their countries of origin. Legalizing their presence would remove the dangers that a large, clandestine population engenders.[8]

And, in testimony before the Select Commission, Larry Fleisher of the American Civil Liberties Union, noted:

> The existence of [undocumented/illegal aliens] in our country creates an underclass who are denied basic rights and who live and work under conditions that are intolerable. What can be done? What can the Commission do? So many propose apprehension and deportation for these people. This is a totally unacceptable solution. It would cause great upheaval. It would cause discrimination against our racial and ethnic minorities and would violate the civil liberties of many in our country. . . . We believe that the only way to reduce this undocumented population and to mitigate the unjust conditions that are associated with the undocumented population is to have a legalization program.[9]

In addition, advocates of the legalization program argue that it would help bring about more effective enforcement in two ways: by enabling enforcement authorities to concentrate on ports of entry where they can be much more efficient; and by providing reliable and needed information concerning the sources, routes and other characteristics of such migrations.

Opponents of legalization insist that such a program would reward illegality and possibly encourage future illegal migration. They suggest that more vigorous enforcement measures by themselves will lead to the deportation of some undocumented/illegal aliens and perhaps encourage others to return home. Roger Conner, Executive Director of the Federation for American Immigration Reform, testifying at the Select Commission's public hearing in San Antonio stated:

> We must have an operative program for effective law enforcement before such pardons are granted and the Administration and Congress must have demonstrated the desire and will to abolish illegal immigration or such pardons will only spread the ills they were designed to eradicate.[10]

E. Philip Riggin, Deputy Director of the National Legislator Commission of the American Legion, presented his organization's point of view at the Select Commission's Phoenix hearing:

> Although we are opposed to a large-scale amnesty, we realize that in some cases there is just need to grant legalization of status. There are existing procedures for legalization of status on a case-by-case basis. We believe that it would be a mistake to liberalize the existing criteria for status legalization, for that could well have the counter-productive effect of encouraging illegal migration.[11]

Enforcement means recognition of an unrelenting, inexorable fact. Without the institution of new enforcement measures backed by a determined political will, illegal migration to the United States will become worse in the future, undermining law in general and immigration laws specifically. When one considers that an increasing proportion of undocumented/illegal migrants appear to come from countries other than Mexico--from the Dominican Republic, Jamaica, El Salvador, Trinidad and Tobago, Guatamala, Haiti, and Colombia as well as countries in Asia and Europe--it becomes clear that it is not possible to solve the problem of illegal migration through a guestworker program with Mexico, even if such a program were highly desirable for other reasons.

During a site visit in New York City, the Select Comission saw Chinese undocumented/illegal aliens climbing several flights of stairs, sometimes with small children, carrying rice to cook on a small burner in a back room of a garment manufacturer's crowded factory. Piles of clothes were everywhere as women bent over their sewing machines, appreciative of the opportunity to work in the United States, but exploited in ways that inevitably depress U.S. labor standards. Comparable scenes can be seen on farms, ranches and factories throughout many sections of the United States, where undocumented/illegal migrants in fear of being caught by immigration authorities.

Sometimes they are caught. A visit to any major Immigration and Naturalization Service (INS) Processing Center (detention facility) reveals a veritable United Nations of persons who have sought to find work and other opportunities in the United States outside of the law, and were caught. Conversations with such persons revealed the desperate lengths to which they went to come to this country, and, sometimes, if possible, to remain. Occasionally, they come for noneconomic reasons. One such man, a bright and attractive Chilean, who was an ardent believer in freedom and equality, was held in a detention facility in Brooklyn, New York. He had come to the United States to help plan a revolution against the Government of Chile. Sometimes undocumented/ illegal aliens are ex-students who are out of status, as in the case of an Iranian man who had himself picked up by the immigration authorities because he wanted to go back home and fight for the revolution. Overwhelmingly, the men and women in the detention centers have come to the United States to find work. Several men from Poland who stowed away in a ship to come to the United States and one freely acknowledged that he had not come for political freedom but to make enough money "so that my wife could have an operation in Europe." More typical was the woman who had come from Guatemala ten years earlier, who supported a crippled husband and family back home. She had walked through Mexico to the United States border and hitchhiked to New York City, choosing New York as a destination because "I would fit in easily."

Before she had never seen an immigration officer, being picked up while waiting for a bus. Now, she awaited deportation because without close family in the United States she could not show that her return to Guatemala would result in severe hardship.[12]

The Select Commission concluded, as discussed further in Part III, that there was nothing humanitarian in continuing a policy which permits persons to take such risks and which even dooms some of them to death in the Arizona desert or in the ballast tanks of ships. One of the main tasks facing this country, the Commission concluded, is to demagnetize the opportunities for work outside of the law. Toward that end, the Select Commission recommended several changes that would enable the United States to remain a society open to immigration and refugees and, at the same time, to enforce effectively the limits which we set on immigration.* Most of these recommendations deal with strengthening the capacity of INS enforcement authorities to do their jobs, that is, providing an increase in the number of primary inspectors at ports of entry and the mobile-inspections task force, and the vigorous investigation of overstays and student visa abuses. But the centerpiece of the enforcement strategy would be passage of an employer-sanctions law that involves both employer and employee responsibility for its effectiveness and which relies on a secure, nondiscriminatory means of verifying employee eligibility, the systems for which are discussed further in Chapter X.

Rights and Responsibilities Under The Rule of Law

Effective enforcement--including expeditious deportation where it is warranted--is one aspect in upholding the rule of law. Another is to make certain that the fundamental rights of aliens and citizens under our law are protected. Part of the problem, as explained in testimony at several public hearings, has to do with the operation and structure of the Immigration and Naturalization Service. Another part of the problem has to do with the law under which they try to do their job.

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*See recommendations II.B.1. to 8., VI.B.3. to 5., VI.F., and VIII.A.1. to 3. in Final Report.

Church and service organizations, Asian and Hispanic community representatives, present and former INS personnel, and others testified that U.S. immigration laws and policies, for various reasons, including the law itself, are not being administered satisfactorily. Some witnesses pointed to the insensitivity of INS personnel while others emphasized the overwhelming workload and lack of resources to do the job; many came back to the problems that stem from the inadequacies of the law itself.

The Commission could not check every allegation made, but patterns of evidence were developed and, in some cases where checks were made, allegations appeared to be justified. Epifania Lopez, a Filipino American woman who testified in San Francisco, detailed personal examples of INS harassment that included the confiscation of her green card and passport. "I have never violated a law," she said, "but was made to feel like a criminal." In Denver, Margaret Olorunsala, a

U.S. citizen, claimed that she and her Nigerian husband had encountered repeated "racial discrimination at the local INS office." At a hearing and during site visits in Miami, the Commission staff heard charges that the Immigration Service abused its discretionary authority in Haitian asylum cases. Reverend Gerard Jean-Juste told of discovering an eight-year-old Haitian girl who was detained in the women's cell of a West Palm Beach jail for over two weeks.[13]

Lee Teran, a legal aid attorney who testifed in San Francisco, provided instances where apprehended persons were "never advised of their rights to deportation proceedings, nor advised of their rights to counsel". Thomas Santana testified of alleged brutality along the United States-Mexico border against aliens. In Arizona, there were charges of physical abuse of some aliens by U.S. Border Patrol agents. Several witnesses expressed concern over INS exclusion of elderly Asian permanent residents who upon returning from abroad were barred from entering the United States because they had received security income.[14]

Many witnesses criticized the use of state and local officials in the enforcement of immigration law. Nicasio Dimas, representing the Mexican American Legal Defense and Education Fund, testified that the federal policy against the involvement of state and local police in immigration law enforcement is often ignored. Because of "their general unfamiliarity with the immigration laws and their lack in training in immigration laws," he urged that state and local police be preempted from immigration enforcement.[15]

Some witnesses testified and others wrote to the Commission recommending that a code of ethics and discipline be established, as well as a system whereby aggrieved persons could present their complaints. At the San Francisco hearing, a panel of Asian Americans concluded that the INS often was insensitive to the needs and concerns of the various Asian communities in that city and suggested "the establishment of citizen review boards to include representatives from the INS, the local bar and social service agencies." Such boards would adjudicate complaints and review allegations of officer misconduct.[16]

In many cases, the failure of INS to provide more effective and sensitive service to lawful permanent resident and U.S. citizens and to consistently respect the human dignity of all persons, including undocumented aliens, stems from the failure of successive administrations to give it proper support. In San Francisco, Sister Adela Arroyo characterized the working conditions at INS as inhumane and urged the Select Commission to ask that Congress "face its responsibilities and fund INS at appropriate levels." Lydia Savoka of the U.S. Catholic Conference told the Commission in New York that "the low morale of the INS . . . has a great [negative] impact on the delivery of services."[17]

The Select Commission made numerous recommendations to correct these deficiencies, to provide more effective and efficient service to aliens and citizens, and to protect the rights of those who come in contact with persons administering, adjudicating and enforcing U.S. immigration law.* These recommendations include, among others: the training of INS officers to familiarize them with the rights of aliens and U.S. citizens, the establishment of a code of ethics and behavior for all INS employees, the upgrading of training to include courses on the history and benefits of immigration and better foreign-language training; the prohibition of apprehension based on immigration charges by state and local law enforcement officials, the maintenance of strict standards in arresting persons thought to be in violation of immigration law and the creation of an Article I Immigration Court to expedite judicial action in immigration cases.

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*See recommendations II.A.8.; V.B.4. and 5.; VII.B.3.; VII.C.1. and 2.; VII.D., E. and F.; VIII.A.2.; VIII.B.1. and 2.; VIII.C.1. and 2; VIII.D.2. and IX of the Final Report.

There is no fundamental inconsistency between firm, consistent, clear application of the law in order to keep out those who are not permitted to immigrate and a strict, consistent adherence to the law in order to protect the rights of those who come in contact with it. Recognizing that INS, consular and other authorities responsible for the enforcement of our immigration laws have an extremely difficult job, the Select Commission has attempted to incorporate the highest standards of U.S. jurisprudence into an enforcement system that requires trust and discretion to be given those responsible for the functioning of that system. The recommendations attempt a balancing act, a fine-tuning of the law to protect the most fundamental human rights against the arbitrary abuse of authority while making it possible for the authorities to do their job in such a way that the fundamentals of the law itself are maintained.

The Legalization Program

Probably the most important recommendation made by the Commission in support of both enforcement and the rights and responsibilities of persons under the rule of law proposes linkage of the legalization (or amnesty) of a substantial portion of undocumented/illegal aliens now in the country to the institution of new enforcement measures. Amnesty without the institution of such measures would be forgiveness and nothing more. It would signify to many a reward for illegality. Legalization within the framework of a consistent, coherent effort to live by the law would bring a substantial proportion of the existing undocumented/illegal population under the protection of the law, to the benefit of all Americans. Further, it would make it possible for the federal government to enforce new measures to curtail the undocumented/illegal flow of aliens to the United States much more effectively than has been true in the past.

That critical linkage is developed more fully in Chapter XI, but cannot be stressed too often. Effective measures to

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curtail the flow of undocumented/illegal migration to the United States depend in considerable measure on the legalization of the present group of undocumented/illegal aliens. Only after legalization takes place will we be able to know the sources, routes, migration patterns, characteristics and impacts of the undocumented/illegal aliens who have come to the United States in the last ten years. Only then will we be able to target aid and investment strategies to specific localities in an effort to reduce migration pressures. Only then will we be able to abandon the inefficient, costly "cops and robbers" approach to illegal migration and to pinpoint enforcement strategies at ports of entry and in the interior in a much more effective way. Only then will we bring out of the shadows large numbers of persons who live outside the law at the present time, a factor which breeds lawlessness not so much by them as against them, and which keeps them from participating more fully and productively in American life.

For all of these reasons, the Commission's unanimous recommendation to legalize eligible undocumented/illegal aliens now in the United States was backstopped by other recommendations to encourage a large turnout of persons qualified for legalization, some of whom may already be here legally without a new law but do not know it, and to provide a significant role for voluntary agencies and community organizations in the legalization program.

A Guestworker Program and The Rule of Law

One of the great attractions of the guestworker idea is the possibility that a large-scale temporary worker program would channel a great many persons who otherwise would be undocumented/illegal migrants into a lawful program. The United States could, it has been argued, make the present group of undocumented/illegal aliens temporary workers. This action would give them a legal status without putting them on a potential citizenship track and bringing them under the full protection of the U.S. Constitution and most of the entitlements which cover resident aliens and citizens. At first glance, a guestworker program seems to allow for having one's cake and eating it, too. If, indeed, it channeled a large proportion--perhaps a majority--of otherwise undocumented/illegal migrants into a legal migration stream, it would substitute for new and costly enforcement measures. That accomplishment, it can be argued, might offset whatever depressing effects a large-scale temporary worker could have on U.S. labor standards and wages, whatever displacement of U.S. workers might occur and whatever harmful effects might be caused as a result of the identification of certain kinds of labor with foreigners.

But the Select Commission did not recommend that the United States institute a large-scale temporary worker program. It did not do so partly because of its concern that such a venture would complicate the problem of enforcing the immigration law, in addition to setting up a double standard of law for the treatment of persons working within the United States.

As explained in Chapter XII, a guestworker program is not likely to be an effective substitute for enforcement or an effective means of channeling a substantial portion of otherwise undocumented/illegal aliens into legal status. The boundaries of the program--limitations on who can come by age, sex or marital status, possible limitations on where aliens could be employed and live, and time limitations--would have to be enforced. The standards imposed on employers for maintaining entitlements and rights of employees would also have to be enforced. And the very creation of a guestworker program, given the past experience of the United States with contract labor, would be likely to stimulate new migration chains, greatly expanding the number of persons who might try to come to work in the United States outside the law.

The Commission did not rule out the possible expansion of the present temporary labor program, the so-called H-2 program. In effect, it sent a warning to those who would consider its vast expansion as an instrument of foreign policy or economic growth or as a way of channeling otherwise undocumented/ illegal migrants into a lawful status that such an expansion would challenge the very concept of an open U.S. society--one in which all persons who live and worke in the United States fall under the same lawful protections and are provided the same opportunities, regardless of nationality.

Footnotes

1. Governor Bruce Babbitt, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Phoenix, February 4, 1980.

2. New York Times, July 6, 1980.

3. Los Angeles Times, February 10, 1980.

4. Policy statement from American Friends Service Committee submitted at the public hearing of the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980.

5. Letter from American Farm Bureau Federation, Letter file, Select Commission on Immigration and Refugee Policy papers, National Archives.

6. Senator S.I. Hayakawa, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980.

7. Alberto Saldamando, Executive Director, California Rural Legal Assistance, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980.

8. Business Week, June 23, 1980.

9. Larry Fleisher, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980.

10. Roger Conner, Executive Director, Federation for American Immigration Reform, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Antonio, December 17, 1979.

11. Philip Riggin, Deputy Director, National Legislative Commission of the American Legion, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Phoenix, Feb 4, 1980.

12. Brooklyn site visit of the Select Commission, January 22, 1980.

13. Epifania Lopez, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980; Margaret Olorunsala, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Denver, February 25, 1980; Reverend Gerard Jean-Juste, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Miami, December 4, 1979.

14. Lee Teran and Thomas Santana, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980; open-mike witness unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, February 4, 1980.

15. Nicasio Dimas, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980.

16. Panel at the Select Commission's public hearing in San Francisco included representatives of the Asian American Bar Association, the Chinese Newcomers Service, Westbay Filipino Multi-Service Center, the International Institute of the East Bay, the Association of Asian Indians in America, and the Bay Area Task Force for the Defense of Filipino Immigrants Rights.

17. Sister Adela Arroyo and Lydia Savoka, unpublished testimony, Public Hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, June 9, 1980.

CHAPTER III: FIRST PRINCIPLES OF IMMIGRATION REFORM--
THE OPEN SOCIETY*

The open society--like the phrase the rule of law--is one which means different things to different persons. From the point of view of immigration to the United States, the open society has come to mean four things:

- Nonimmigrant aliens--whether tourists, business persons, students or others--will be welcome to this country as long as they do it no injury;
- Immigrants and refugees will be admitted to the United States without regard to color, nationality or religion;
- Once admitted to this country as resident aliens, such persons will be covered by the fundamental rights of the Constitution and the vast majority of entitlements afforded U.S. citizens; and
- Resident aliens, if they choose, may place themselves on a citizenship track and be eligible for naturalization in the relatively short time period of five years.

The open society does not mean limitless immigration. Both quantitative and qualitative limits are needed to serve the national interests of the United States. But those limits must never be imposed by reason of color, nationality or religion; and once admitted to the United States, aliens should be welcomed and encouraged to be a part of the country and contribute to its well-being.

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*Lawrence H. Fuchs, author.

While there is widespread public consensus in support of this definition of the open society, there remain fundamental policy questions concerning the number of immigrants to be admitted and the criteria for choosing them.

The Public Concerns

Improving Our Admissions Policy: Should the United States continue to admit immigrants and refugees at about the same levels as in recent years, or should it reduce or expand that number?

Arguments concerning immigrants and refugee admissions levels varied in the testimony received by the Select Commission.

A variety of persons argued that we should go beyond our present level of immigration, usually--but not always--under the assumption that illegal migration could be controlled. Leaders of religious and ethnic groups, historians, social workers and others maintain that immigrants are needed to revitalize such American values as hard work and thrift, and to reaffirm such ideals as opportunity and freedom. Many economists said that additional immigrants are needed to compensate for projected shortages of American workers; they dismiss the idea that immigrants take jobs from those already here. John Kenneth Galbraith's testimony at the Boston hearing of the Select Commission on November 19, 1979 illustrates this viewpoint:

> Then there is finally the notion, one of the oldest errors in economics, that in some ways in any community the job supply is limited. The one thing, however, that we know from all historical experience is that the demand for workers increases with the supply of workers. . . . The development process, which is itself partial remedy for unemployment, is helped by migration . . .[1]

On the opposing side, the Commission heard from persons who believed immigrants threaten employment, social harmony and the quality of life in this country. At its Denver hearing, Gerda Bikales of the National Parks and Conservation Association stated:

> Changed circumstances in our historic evolution now dictate a changed immigration ethic. For the foreseeable future, we must regretfully opt for more restrictive positions, and move away from a functional immigration policy toward one that is essentially 'symbolic.'
>
> The objective of such a policy would not be to quickly people every last bit of open space, nor to rush in workers to occupy every potential and conceivable job that might be created in our economy, nor would it foolishly aspire to relieve the world of its excess population.[2]

Those who urged the continued acceptance of refugees pointed out that such acceptance often means the actual saving of lives. Historians argued that refugees traditionally have helped to make the United States a great country. Several witnesses maintained that the acceptance of a fair share of refugees keeps the United States in the forefront of the world struggle for human rights.

Some persons who argued for the reduction or stabilization of the number of immigrants admitted to the United States also supported a policy which would opens the front door widely for refugees. In Boston, Phyllis Eisen, Immigration Director of Zero Population Growth, Inc. testified that:

> Rules for immigration should be set in the context of the federal commitment to planning for population . . . stabilization. Immigrants and refugees, with the exception of immediate family members, should be admitted under the global goal or ceiling for immigration. A higher preference for the admission of refugees than now exists should be given. In times of international crisis, refugees should be admitted over the annual global goal.[3]

Others were upset because the number of refugees accepted in 1979 and 1980 was far greater than the annual flow of 50,000 persons anticipated by the Refugee Act of 1980, because refugees compete for services with other Americans and because many persons have been accepted as refugees who do not meet the strict definition of refugee. They further believe that the United States is inviting trouble by not placing clear limits on its acceptance of refugees and vigorously enforcing these limits.

To Serve the National Interest: Should the United States change the criteria by which it selects immigrants?

The heart of the controversy over the criteria for selecting immigrants has to do with the emphasis which is placed on family reunification and the way in which family is defined. Representatives of many ethnic groups tend to emphasize the importance of family reunification and support a broad definition of immediate family, including brothers and sisters and in some cases grandparents of U.S. citizens and permanent resident aliens. They point out that injury is done to American citizens and resident aliens when they are separated from their families for a long period of time. Others maintain that such a heavy emphasis on family reunification virtually eliminates nonfamily-related immigration and inhibits selectivity in our immigration policy. They call for a strengthening of independent, nonfamily-related immigration to support clear national interests.

In addition to the criteria for selection, another major controversial issue is the question of selection by virtue of nationality. Strong views were advanced that the United States should continue to place equal limits on each country, regardless of its size, the number of persons in it who wish to become immigrants, or its proximity or historical relationship to the United States. These views were advanced on the ground that each sovereign nation is entitled to equal treatment and that the lifting of the current per-country ceilings would mean that a higher proportion of immigrants would come from the approximately six nations that have the largest number of persons wishing to immigrate.*

Arguments, in opposition to per-country ceilings, state that the present system is inimical to American ideals, since in some immigrant preferences persons of one nationality go to the front of the line if they come from countries with a low demand for immigration. These individuals then enter the United States ahead of those who have been waiting longer and who happen to live in countries with a high demand, resulting in a preference for persons of one nationality over another, even though each country has an equal ceiling.

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*The present law imposes an annual ceiling of 20,000 on each country for those preferences limited by a world ceiling of 270,000. All witnesses who testified on the subject agreed that special colony ceilings of 600 persons per colony should be dropped.

The Open Society: Setting Numerical Limits

Research and analysis, and testimony at public hearings, convinced every Commissioner that the United States should remain a country of immigration. Even on such major issues as how many and by what criteria, the consensus among Commissioners was remarkably strong. While some Commissioners spoke in meetings of the possibility of admitting an annual total of 1,000,000 immigrants and refugees and one Commissioner called for an overall annual limit of no more than 550,000, the majority of the Commission's members joined in supporting a level of immigration comparable to that of the immediate past. By a vote of 12 to 4, the Commission decided to increase the present annual ceiling of 270,000 numerically limited immigrant visas to 350,000. With a projected 150,000 immigrants admitted outside of the numerically limited system and 50,000 "normal flow" refugees admitted under the Refugee Act of 1980, total gross immigration would be 550,000. Added to this total would be refugees admitted under emergency conditions and an additional 100,000 visas that the Commission recommended be available every year for five years following the initiation of a new admissions system.

The obvious question which emerges is: Why not admit more immigrants and refugees? Chapter VI points out that the admission of immigrants and refugees contributes to our economic growth, strengthens our cultural and language resources, enhances the role of the United States as a leader in world affairs and as a champion of human rights, and actually contributes to a stronger population base for sustaining our social security system and our manpower needs. If the entry of these individuals is so strongly in U.S. interests, what is it that argues against their entry in unlimited numbers?

Refugees

While refugees bring long-term gains to society as a whole, they produce short-term impacts which bear heavily on particular communities. Coming in relatively large numbers to specific areas in short periods of time, they strain the suppply of housing, and educational and hospital facilities.

Their use of public housing can be an explosive issue where subhousing is in short supply. Their tendency to crowd more persons into an apartment or room than most Americans deem healthy arouses negative feelings. Health problems also provoke considerable concern among the public. Suffering from persecution and malnutrition, it is not surprising that Vietnamese refugees show higher incidences of diseases associated with malnutrition and stress. As a result, they need more medical attention than the average person but that does not necessarily produce a sympathetic response from everyone.

The educational needs of refugees are special, too. With so many languages spoken by their students, some school systems, like those in Los Angeles, California and in Fairfax County, Virginia, find it impossible to provide effective bilingual education programs for everyone. And with national resentment against welfare payments spreading, it is understandable that taxpayers and economically disadvantaged U.S. citizens would resent refugees who are also entitled to assistance, especially since state and local governments are fully reimbursed for payments to refugees by the federal government for up to three years.

Thus, although there are humanitarian and national-interest arguments to be made for admitting an even higher proportion of the world's refugees than we now do, these arguments must be tempered by reality. Despite the long-term benefits which result from refugee migrations, the negative, short-term concentrated impacts--real and perceived--argue against unlimited refugee admissions.

The Select Commission recognized that it is extremely difficult to set quantitative limits for refugees given the traditions of the United States and its responsibilities as a world power. In one of the Commission's earliest consultations on September 17, 1979, Dr. William H. Overholt, almost anticipating the events that would occur in Poland in late 1980 and 1981, predicted that rising nationalism accompanied by an organized worker movement in some eastern European countries, particularly Poland, would force the communist party to negotiate with workers. Prophesying that dissident newspapers and movements would proliferate in key eastern European countries, he suggested that the movement toward east European independence "would endanger the peace of all of Western Europe and could produce a wave of refugees far greater than the East European wave of the 1950s."[4]

While our government and leaders within Poland strive to prevent such a calamity, everyone recognizes that it is possible, and that the United States must be prepared to deal with emergency refugee situations. That is why the Select Commission, while reaffirming the concept set forth in the Refugee Act of 1980 that this country should be prepared to accept a normal annual flow of approximately 50,000 refugees, also endorsed the provision in that law which allows the President to admit refugees in emergencies, following consultation with the Congress.

Immigrants

Quantitative limits on immigrants are, of course, not difficult to set, although they have proved troublesome to enforce. Although no one knows how many undocumented/illegal aliens coming to the United States in recent years actually have settled in this country (see Chapter IX) that number probably has not averaged less than 250,000 annually in recent years. Of course, a large proportion of these undocumented/illegal aliens eventually may return to their countries of origin, but that is even more difficult to estimate than the number who entered in the first place. The annual figure for returnees probably is well over a quarter of a million, perhaps as high as one million, a large proportion of whom returned within the first year after entry. With an enforceable immigration law, one that includes an employer sanctions provision to demagnetize the powerful attraction of job opportunity, it should be possible to reduce permanent settlement from illegal migration to an annual figure of no more than 50,000.

On the assumption that large-scale illegal migration can and will be reduced, it is possible to consider the question of quantitative limits on legal immigration in a way that is meaningful. In considering levels of immigration, the Select Commission was charged by Public Law 95-412 to take into account demographic, as well as other considerations.

The United States does not have a population policy, even though population density if not necessarily the most significant factor, is generally recognized as a factor that affects the quality of life. Yet, the Select Commission did give considerable attention to immigration in relationship to population growth, recognizing that immigration is only one factor along with fertility, mortality and emigration in determining the future population size of the United States.

Although a much less significant factor than fertility in affecting population size, and population size, immigration is one aspect of public policy over which we should have considerable control. Just as we can increase immigration to enhance economic growth, manpower capabilities, and cultural and linguistic skills or to strengthen the United States role in world affairs, we can lower immigration in order to come closer to the time when the United States will achieve zero population growth.

The Case for Expansion

So appealing are the arguments for increased immigration that several individuals and organizations recommended to the Select Commission that the United States should return to a policy of vastly expanded immigration. Their arguments rest on estimates of capacity and need, and on grounds of responsibility. Maintaining that the United States has a capacity for absorption of a much higher number of immigrants, they pointed out that this country accounts for 25 percent of the world's GNP with only 6 percent of its population; has a lower density of population than any wealthy industrial nation in the world, with the exceptions of Canada and Australia; has demonstrated its capacity to integrate and acculturate immigrants into mainstream American life and has a population with only a small proportion of foreign-born individuals (in 1970 only 4.5 percent of the U.S. population was foreign born).*

With respect to need, the proponents of increased immigration have pointed to the extremely low (below replacement) fertility rate of 1.8 in the United States, which means that there will be fewer young and middle-aged persons in the U.S. population in the decades to come--fewer workers to fill jobs, to contribute to the social security system, and to meet the needs of the armed services and public services activities.

Concerning responsibility, those who support higher immigration levels have maintained that the United States should recognize the importance of an immigration policy:

- That facilitates the rapid reunification of families; and
- That gives particular recognition to the importance of immigration from poorer countries, especially those countries with which we share a border that, until recent times, was open to virtually unlimited immigration.

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*This 1970 figure (4.5 percent) represents close to an all-time low for the twentieth century, compared to a high of 14.7 percent in 1910.

The Select Commission listened with care to these arguments but could not recommend returning to a scale of immigration comparable to that which existed prior to the introduction of the highly restrictive immigration laws of 1917, 1921 and 1924. If we were to return, for example, to the scale of immigration that existed during the first decade of the twentieth century when nearly 9 million immigrants were admitted to a United States population of 84 million, it would mean admitting close to 2.5 million immigrants each year for the next ten years. A return to such levels of immigration would mean, even at present low rates of fertility, that the United States was abandoning any effort to bring about population stability in this country for many decades to come.

The Case for a CutBack

On the other hand, the Select Commission was not persuaded by the arguments of those who would impose new quantitative restrictions on legal immigration in the name of population control and resource conservation. Indeed, some testimony before the Select Commission, as related in Chapter VI, indicated that immigration to the United States may in some respects have a positive effect on world ecology. The populations of such places as Haiti, other Caribbean islands, parts of Latin America, most of India, Pakistan and sub-Sahara Africa are using their natural resources at a far greater rate than is the United States in order to stay alive.

Immigration is not only a way to retard the rate of ecological despoilation in these countries. It will also help to slow world population growth since the children of immigrants adapt to American fertility patterns (see Chapter VI). In addition, the proportion of the world's population concerned about population control and environmental quality may well be increased by immigration because of the increased transfer of ideas concerning resource conservation and appropriate technologies. In the long run, environmental-ecological issues are planetary and it is not possible for the United States to protect its environment without a growth in ecological consciousness and practice everywhere, something that may be served by immigration to the United States. Nor is it immigration which threatens conservation practices in the United States. The ecologically unsound technological developments of the past two decades would have taken place even if there had been no immigration. As Senator Alan Cranston has noted:

Population pressures did not lead soap manufacturers to switch to detergents.

Population pressures did not lead farmers to the use of pesticides and chemical fertilizers.

Population pressures did not lead our cities to the abandonment of public transit systems nor to our public's dependence on the private automobile.

Population pressures did not develop the too-big and too-powerful American automobile.

Population pressures did not bring about the switch to flip-top beer cans and nonreturnable bottles.

Population pressures did not fill our homes with myriad electrical gadgets.[5]

The clear threat to the environment is the manner in which we use and abuse our resources, not in the proportion of population growth which is accountable to immigration, including the admission of refugees.

Often overlooked in such discussions is the fact that fertility is the most significant factor in determining population growth. The future size and age composition of the U.S. population is more sensitive to relatively small variations in fertility than to changes in the level of immigration, even if the latter reached 2 million per year. That is one reason why the

Commission voted for flexibility in setting immigration levels, with periodic adjustments to be made upon the recommendation of the Subcommittees on Immigration in both houses of the Congress. Some Commissioners argued that a special entity, an Immigration Advisory Council, should be created to coordinate all aspects of immigration research and to make periodic recommendations, perhaps every two years, for adjustments in the levels of immigration. Such recommendations would depend on changes in fertility or other factors, such as economic conditions in the United States.*

Rates of emigration also affect policy with respect to immigration levels. Unfortunately, the United States no longer keeps emigration statistics. Nevertheless, estimates have been made on emigration levels varying from a low of 10 to 15 percent of annual immigration to a high of 50 percent. Historically, when the United States maintained emigration statistics (up to 1958), emigration was approximately 30 percent of the annual level of legal immigration. In a recent study it was estimated that emigration rates for legal immigrants from Canada, Central America, the Caribbean islands (excluding Cuba) and South America may be at least as high as 50 percent. Asian emigration rates are lower. The Korean and Chinese rates, for example, are less than 20 percent. These estimates, based on administrative and survey data on immigrants who came to the United States in 1971, are not conclusive. Nevertheless, they suggest that the current emigration rate equals or is even higher than those of the past which averaged about 30 percent of the level of immigration.[6]

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*The issue of flexibility was considered by the Commission mainly in connection with the question of numbers. However, this issue was also raised as part of the discussion on U.S. territories. The Select Commission concluded that general immigration policies could not apply uniformly to such territories as the Virgin Islands, Guam, American Samoa and the Northern Marianas. Research and testimony made it clear that each of these have special immigration problems because of their vulnerability as islands that are easily accessible and have very small populations. As conceived by the staff, the Immigration Advisory Council would have played a role in making recommendations for territorial exceptions to the Immigration and Nationality Act.

The Commission's Approach to Numbers

In confronting the question of numbers, the Select Commission was faced with certain facts addition to those which consistently point to the benefits immigrants bring to the United States. Emigration rates are speculative. The fertility rate, now at an all time low, could increase. Large-scale migration of newcomers creates social and ethnic tensions which strain the capacity of the United States to bring about a more just and decent multiethnic society.

With these facts in mind, the Commission's approach to numbers was cautious. Its call for an increase in numerically restricted immigration from 270,000 to 350,000, with a concomitant expansion of the immigration of numerically exempt persons from 130,000 to approximately 150,000 and an additional 100,000 numbers each year for five years to clear existing backlogs, balanced the opinions of those who believe expanded immigration to be in the national interests of the United States (and well within the capacity of this country to absorb) with the beliefs of those who urge the earliest possible attainment of zero population growth.

The Select Commission did not choose an ideal population goal or even address the issue of an ideal growth, but, given certain assumptions, the recommendations of the Select Commission would lead to an annual average permanent net migration of about 500,000, which would bring the United States to a population of 274 million by the year 2050, with a negative growth rate (population going down) of -0.08.

There is nothing magic about the number 274 million. Given more economic, intelligent living habits and appropriate technologies, there is no doubt that the quality of life in the United States could be improved vastly even with a population of well over 300 million in 2050. But the recommendations of the Select Commission would bring the nation to zero population growth well before that number was reached, based on these assumptions:

- Numerically restricted immigration would be 350,000 with the rate of emigration at 30 percent;
- Numerically unrestricted immigration for the close relatives of U.S. citizens would average 170,000 annually, with the rate of emigration at 30 percent;
- The normal flow of refugees would be 50,000 with an annual average addition of 50,000 numbers for 60 of the 70 years projected, with emigration at a rate of 5 percent;
- An additional 100,000 numerically restricted immigrants would be included to clear backlogs for each of the first five years after the initiation of a new system, with approximately 30 percent emigration;
- Undocumented/illegal immigrants who come and establish roots in the United States would total 50,000, with emigration at about 30 percent;
- National fertility would continue at a rate of 1.8; and
- The legalization program would not significantly increase or reduce the number of permanent entrants to the United States.

Numerically restricted immigration would be 350,000 with the rate of emigration at 30 percent. The assumption regarding immigration may be conservative given the recent estimates of immigration referred to above.

Numerically unrestricted immigration for the close relatives of U.S. citizens would average 170,000 annually with the rate of emigration at 30 percent. The assumption of 170,000 may be high since 138,000 such persons immigrated to the United States in 1979. That number undoubtedly will go up if the Select Commission's recommendations are followed in the near term, perhaps from 150,000 to 160,000 and then level off. The extra 10,000 assumed here provides for the possibility of additional expansion and demand. The assumption regarding emigration may be low.

The normal flow of refugees would be 50,000 with an annual average addition of 50,000 numbers for 60 of the 70 years projected, with emigration at a rate of 5 percent. The assumption concerning the admission of 100,000 refugees in all but ten of the next 70 years is 50,000 more than was stipulated by the Refugee Act of 1980. But the world seems less stable now than it did only a few years ago and it seems prudent to project a higher number. The assumption concerning emigration at five percent may be low.

An additional 100,000 numerically restricted immigrants would be included to clear backlogs for each of the first five years after the initiation of a new system with approximately 30 percent emigration. The assumption that emigration will be 30 percent may be low.

Undocumented/illegal immigrants who come and establish roots in the United States would total 50,000, with emigration at about 30 percent. This assumption may strike many as being overly optimistic. But the Commission's recommendation for a modest increase in numerically restricted immigration is linked to its recommendations for closing the back door to illegal immigration and the Commission believes they will be successful if implemented.

National fertility would continue at a rate of 1.8. This assumption seems reasonable given the long-term fertility behavior of Americans, including immigrants and their descendants over the past half-century, and given what we know about the relationship of fertility to education.* If the fertility rate changes, however, adjustments can be made in immigration levels.

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*See Chapter VI.

The legalization program would not significantly increase or reduce the number of permanent entrants to the United States. This assumption is based on the fact that the legalization program would cover undocumented/illegal aliens already here, many of whom were counted in the 1980 Census. Some would be encouraged to remain in the United States, to become citizens and raise their children here, following legalization. But a great many would be encouraged to move back and forth between the United States and their countries of origin once they had legal status, probably increasing the rate of emigration above the expected 30 percent. In any case, close relatives of newly legalized aliens would admitted to the United States under the number set for numerically restricted immigration.*

The limits on numerically restricted immigration should not be fixed for longer than five years. The Select Commission recognized that immigration levels should be periodically reviewed in relation to other circumstances (for example, fertility rates, economic conditions or international events) and that the number of numerically restricted immigrants should be adjusted in response to changes in these circumstances.

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*See Chapter VIII.

Thus, in a typical year between 1980 and 2050, new settlement from all sources would be as follows:

	Gross Immigration		Rate of Return Emigration		
Numerically restricted immigration	350,000	x	30%	=	105,000
Unrestricted	170,000	x	30%	=	51,000
Undocumented/illegal aliens	50,000	x	30%	=	15,000
Refugees	100,000	x	5%	=	5,000
(except for 10 of those 70 years when it would be 50,000)					176,000
Total gross immigration	670,000				
Total emigration	176,000				
Net immigration	494,000				

All these assumptions are open to challenge, although the projections on which they are based are mathematically precise. It can be argued that the assumption that this country will gain control over illegal migration and reduce the annual number of illegal migrants who will settle in the United States to 50,000 is too optimistic. But all of the Commission's recommendations are interrelated parts and the call for a modest increase in numerically restricted immigration is linked to the recommendations for closing the back door to illegal migration.

It can also be argued that the assumption of only 30 percent emigration on the part of new immigrant groups is low, and that the assumption of an annual average of 100,000 refugees (for all but five years over the next 70) is high, thereby inflating net immigration figures. But even with these conservative assumptions, the United States would achieve zero population growth within 70 years at less than 275 million persons, as long as the fertility rate does not swing upward. If it does, then the United States, in order to reach the goal hypothesized here of 274 million by the year 2050, may choose to lower immigration levels. Or, if refugee flows are significantly less than projected here, it may choose to increase them.

The Open Society: Qualitative Limits

In addition to the quantitative limits imposed by immigration policy, there are two kinds of qualitative limits which must be considered. The first has to do with selection criteria, the categories and preferences to be established for numerically unrestricted and numerically restricted immigration pursuant to immigration goals. The second has to do with de-selection criteria or the grounds of exclusion on which persons, otherwise admissible to the United States, are barred from entering.

In approaching both questions, the Commission strove for balance. In the first instance, there is the need for balance between essentially three kinds of new entrants: family-related immigrants, independent immigrants and refugees.

As explained in Chapter VII, the Commission made several recommendations to strengthen all three of these categories. It established a few new family preferences and a separate visa allocation, not subject to per-country ceilings, for the spouses and the minor children of resident aliens. It also called for a slightly expanded and redefined separate immigration track for nonfamily or independent immigrants and supported the Refugee Act of 1980.

The Open Society and Nonimmigrant Aliens

Recognizing that the United States has become a tremendously attractive center for study, cultural and scientific activity, artistic performance and tourism, the Select Commission made it clear that the United States wishes to facilitate the movement of people whose sojourn here will contribute to their own particular interests and to the well-being of the American people.

To facilitate the admission of nonimmigrant aliens who want to come to the United States for some specific purpose, the Select Commission made a number of recommendations that focused on:

- The waiving of visas for tourists and business travelers from selected countries where there are extremely low rates of visa abuse;
- The expediting of foreign student work authorization requests;
- The expedited approval of visas for intercompany transferee;
- The elimination of certain restrictive barriers which now limit the ability of this country to train foreign medical personnel; and
- The streamlining of our present temporary worker program, to facilitate the entry of those short-term laborers who are truly needed.

The Open Society and the Admission of Immigrants and Refugees without Regard to Race, Nationality and Religion

The American people are the first in history whose national identity has been shaped not by race, ethnicity or religion but by shared political values and ideals. Over the years, these shared concepts have made it possible for this country to absorb not just the large and now familiar immigrant groups from Europe, but the newer groups from Asia and Latin America as well.

In the past, ethnicity or nationality has been a factor in determining who has been welcomed to the United States. Even now, there is a vestige of older racial attitudes in the per-colony ceiling that was imposed specifically to limit the number of entrants from such places as Hong Kong. The Select Commission has made a clear recommendation to eliminate that last remaining discrimination based in part on racial prejudice.

Aware of evidence of occasional discrimination against aliens because of nationality or color, the Commission made a strong recommendation that such allegations be investigated and corrected and that our immigration laws be enforced without regard to color or nationality. Aware that in the existing process for allocating refugees, there remains a considerable emphasis on the geographic location of those considered--despite the intention of the Refugee Act of 1980 to abandon such criteria--the Select Commission recommended that the U.S. allocation of refugee numbers should consider specific refugee characteristics for political prisoners, victims of torture and persons under threat of death, regardless of geography since geographic considerations have sometimes been used to serve the same purpose as nationality and/or color.

In its effort to eliminate any consideration of color or nationality from its system for admitting immigrants and refugees to the United States, the Commission gave considerable attention to the difficult issue of a special allocation of visas for certain countries based either on demand, size, geographic proximity or historical affinity. In the past, the national origins quota system was based on the theory that immigrants from northern and western Europe would be more likely to adapt well to American values and institutions. In recent years, that argument has not been heard often. The most frequently proposed special case has to do with Mexico and Canada, both of which have had considerable immigration to the United States in the past and each of which, especially Mexico, has a potential for high immigration in the future. A justification for special treatment is that both Mexico and Canada are contiguous neighbors of the United States.

While that case is clearly a good one, especially as a means of alleviating tremendous migration pressures in Mexico, the Commission did not recommend a special allocation of visas for any country. Other nations with large numbers of persons who wish to immigrate to the United States can make a claim for a special allocation. Countries in the Caribbean are neighbors, too. The Philippines is a former colony with particularly close ties to the United States. China, Taiwan and Hong Kong all present cases with a special claim for attention by virtue of the explicit discrimination against Chinese nationals going back to 1882. Potential migration from Africa could also be considerable. Arguments can be made that U.S. immigration policy discriminated against the admission of Black immigrants for centuries and that the importation of slaves broke family ties, a fact that now makes it extremely difficult for Africans to immigrate to the United States since the U.S. immigration system is based so heavily on family reunification.

One could argue that such considerations must fall in the face of the overriding U.S. national interest to provide a safety valve for the underemployed and unemployed of Mexico. But the fact is that immigration does not bring the unemployed or the least well-off of the underemployed from Mexico to the United States since of our own immigration provisions exclude persons who cannot be self-supporting. A special allocation of visas for Mexico, if immigrants were to pass the public charge requirement and other criteria established to protect the U.S. labor market, might only serve to siphon off some of the most energetic and capable of Mexicans which, while not necessarily doing a favor for Mexico, would have the disadvantage of violating the principle of a nationality-blind admissions process.

An even more difficult issue involved the question of per-country ceilings. For some, an equal per-country ceiling for every country in the world is the essence of a nondiscriminatory system. For others, it is a system which, while recognizing the equal sovereignty of every country and making it possible for some immigration to come from many countries, discriminates by nationality, if not by nation. The combined percentage limitations on preferences and country ceilings makes for a very long waiting line in some countries, while in others, persons can move to the head of the line rather quickly.

The Select Commission recognized the value of the principle of equal per-country ceilings and the importance of providing a channel of immigration from every country. It also recognized that it was fundamentally inequitable to the petitioners and harmful to the United States to keep some spouses and minor children waiting for many years to immigrate while others, because of their nationality, gained relatively quick access to the United States. To meet both of these considerations the Commission recommended the separate allocation of a large number of visas to be issued to the minor children and spouses of permanent resident aliens (immediate relatives of U.S. citizens who come in without numerical limitations), with no per-country ceilings.

The practical effect of the implementation of such a recommendation would be to admit these spouses and minor children in the order in which their petitions and applications were approved, regardless of nationality. At any given time in the future, the pattern of demand may change. At the present time, however, the heaviest demand for what are now second-preference visas--the spouses and minor children of resident aliens--is found in Mexico. Nearly 70,000 of the 168,000 persons registered at consular offices around the world for admission as second-preference immigrants are Mexicans. Persons from the Dominican Republic and the Philippines, two countries with the next largest numbers of potential second-preference immigrants (slightly less than 20,000 each) also would benefit. The overriding humanitarian significance of reuniting families and the important social benefits to the United States in doing so justifies the invasion of the equal per-country principle.

Other recommendations made by the Select Commission--the legalization program, the clearance of backlogs, and the modest increase in numbers--will have the practical effect of expediting the immigration of persons from countries with relatively high demand. They are recommended because they follow the principle of the open society which does not discriminate by virtue of nationality or race rather than because they explicitly favor one country over another.

The Open Society and No Second-Class Residents

As already discussed, one of the reasons for the legalization program is to rid the United States of a large underclass of persons who frequently are exploited at work and who live outside the protection of the law. One of the reasons that the Commission did not suport a large-scale guestworker program was its fear that such a program would establish a special class of workers in the United States who would be identified as foreign, considered fit for only certain kinds of work, and who would not be covered by all of the basic entitlements of other U.S. residents. In considering its employer sanctions recommendation, the Select Commission emphasized that no system should be adopted unless it is universal and nondiscriminatory, minimizing discrimination against any group of persons on the basis of nationality or race. In making recommendations for the protection of workers under the present H-2 temporary worker program and calling for the strict enforcement of work standards legislation, the Commission was mindful of the history of discrimination and exploitation of aliens in this country--"No Irish need apply," "Coolie Labor," and differential wage rates for different immigrant groups--and was determined to eliminate such practices.

Aware that elderly, lawful permanent resident aliens who temporarily leave the United States have sometimes been kept from reentering the United States because they have taken advantage of their lawful right to accept social security insurance benefits, the Commission made a strong recommendation that all returning lawful, permanent resident aliens be subject to exclusion only for the following criteria: criminal convictions while abroad, political grounds for exclusion, having engaged in persecution or having entered the United States without inspection.

An open society in the United States has come to mean one which gives all of its residents equal protection of its laws and which strives to provide equality of opportunity. That is a basic reason for strengthening refugee resettlement procedures. Recognizing that refugees often enter the country after having undergone severe privation, the Commission acknowledged the importance of having all Americans accept the responsibility for assisting refugees once they have been admitted and for taking responsibility for the particular impacts which their needs present to local communities.

The Open Society and a Fast Track to Citizenship

The principle of the open society means not only equal treatment and opportunity for all residents, regardless of race or nationality, it also means creating a hospitable climate, citizenship, and enabling the widest and most significant participation in American public life. The principle of the open society says to the world that the United States is confident of its ability to absorb a reasonable number of a great variety of foreign persons knowing that they, too, will help to strengthen and build America. For their part, they have only to abide by the laws, work hard and accept the very values that define the open society itself--freedom, equality of opportunity and respect for diversity.

No other country in the world provides for naturalization as rapidly as the United States. It has been a policy since 1801 that resident aliens who have been in this country for five years should be eligible for citizenship. Partly because certain privileges are reserved for citizens--the right to vote (although at certain points in American history some states gave aliens the privilege of voting) and the privilege of holding office--it has long been policy in this country to encourage resident aliens to become citizens. The great Americanization programs of the 1920s largely succeeded. While the rates of naturalization for nationals from Mexico and Canada were unusually low and have remained so, a strong majority of most other national groups naturalized rather quickly. Children born in the United States of all groups not only became citizens but acculturated to the dominant values and institutions of American society.

Aware that underfunding and other administrative problems have caused delays in naturalization procedures and that some permanent residents have had to wait a year or more before receiving their papers, the Select Commission recommended administrative naturalization to expedite naturalization proceedings and to provide older persons with somewhat greater flexibility with respect to the English-language requirement for naturalization.

Footnotes

1. John K. Galbraith, unpublished testimony, public hearing before Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 19, 1979.

2. Gerda Bikales, unpublished testimony, public hearing before Select Commission on Immigration and Refugee Policy, Denver, Colorado, February 2, 1980.

3. Phyllis Eisen, Immigration Director, Zero Population Growth, Inc., unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, November 19, 1972.

4. William H. Overholt, "A Global Survey of Political-Economic Tensions Which Could Stimulate Refugees or Rapid Migrations, 1980-2000," paper prepared for the Select Commission on Immigration and Refugee Policy, September 17, 1979.

5. Senator Alan Cranston, Separate Statement, in The Commission on Population Growth and the American Future, Population and the American Future, (Washington, D.C.: U.S. Government Printing Office, 1972), p. 150.

6. Guillermina Jasso and Mark Rosenzweig, "Estimating the Emigration Rate of Legal Immigrants Using Administrative and Surveyed Data: The 1971 Cohort of Immigrants," October 1980, paper prepared for the Select Commission on Immigration and Refugee Policy.

CHAPTER IV: FIRST PRINCIPLES OF IMMIGRATION REFORM -- E PLURIBUS UNUM--MORE THAN A MOTTO*

A society such as ours which is open to immigration from all over the world regardless of nationality and which values cultural diversity runs the risk of fragmentation. Yet, the United States has evolved a strongly unifying political culture based on values almost uniformly shared by Americans regardless of their ancestry--the values of freedom, equality of opportunity and respect for diversity itself.

While the strains on American society are considerable, and the stress of persons who come from other lands in adapting to American customs and institutions is great, the story of migration to the United States, whether of immigrants or refugees, is one of success in making one powerful, united nation out of many people. Most immigrants and refugees are not only grateful to be here and wish to remain, they make the United States a better society for having come.

Members of the Select Commission and its staff have been privileged to see the drama of E Pluribus Unum continuing to unfold.

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*Lawrence H. Fuchs, author.

During our public hearings and our visits to immigrant communities throughout the country, we have seen or read about communities of Mongolian Buddhists near Lakewood, New Jersey; Kurds in Nashville, Tennessee; Armenians in Watertown, Massachusetts; Basques in Idaho and Wyoming; Hmongs in Kansas City, Missouri; and Nigerians in Washington, D.C. on their way to becoming Americans.

The temptation to romanticize the immigrant experience is inevitable. There are so many stories of success. They are, for the most part, the stories of our not-too-distant ancestors, usually embellished and made more picturesque than they were in reality. Yet, anyone who knows the history of immigrants and refugees must recognize that stories of anquish and even despair are common. Occasionally, there is official abuse. Select Commission staff interviewed Haitian petitioners for asylum who had been treated roughly by local police and immigration authorities, according to the stories they told them at the Haitian Refugee Center in Miami. Hostile actions by nonofficial groups is more common. In some communities the Ku Klux Klan once again has organized crusades against immigrants. Misunderstandings and insensitivities are inevitable even among well-meaning persons. In one community, Select

Commission staff met with Indochinese refugees who asked that their meeting be kept secret and told us, from their perspective, of the failures of their sponsoring agency which, they said, sometimes disparaged their non-Christian religion. These patterns of rejection or misunderstanding are similar to those expressed by immigrants in the nineteenth and early twentieth centuries.

In addition to experiencing some rejection, immigrants and especially refugees often bring a background of deep sadness to the United States. At the Versailles Housing Development in New Orleans, where young adult Cambodians, Laotians, Hmongs and Vietnamese study English and civics in the evening after working all day, a woman told the story of having lost her baby when the boat she and her husband had been on was overturned on the South China Sea. "I must put the past out of my mind," she said, "so that my heart will not be so sad." But it is extremely difficult for the immigrant generation to put the past behind, difficult to learn English, to cope with misunderstanding and resentment and the frequent estrangement of their own children. Those are some of the reasons why rates of return migration--repatriation or emigration--have been high for some groups of immigrants.

Despite the difficulties of adjusting to a new country, the vast majority of immigrants, and especially their children embrace the dominant values of American political culture and actually strengthen them.

In Fall River, Massachusetts, Select Commission staff members visited a three-room apartment where a young Cambodian refugee, his wife, son, parents, brothers and in-laws had arrived only six weeks earlier. While the elderly grandparents sat behind a curtain in another room, the young man's wife, shyly sat in the corner. Later, she would explain that she watches television constantly to learn English and trys to learn American recipes. Earlier, her husband had made it plain how gratified they were to be in Fall River. "I want" he said, "to live in a liberties country."

Doing Well by Doing Good

Nothing confirms or expresses American values as well as an effective naturalization ceremony. At a Commission site visit in Chicago, several hundred expectant citizens crowded into a court room at the Dirksen Federal Building. Persons with brown, almond-shaped eyes, and dark, thin hair joined others from Latin and Asian countries, blond Scandinavians, shorter and darker Poles and Yugoslavs, almost ebony-colored Nigerians and Ghanians and fair Germans and Englishmen to listen to a speech about freedom, equality, opportunity and diversity in the United States. We watched as one man carefully tore some household plastic wrap to make a package within which to insert his prize, "citizen papers."

What is striking about the immigration saga is that by doing good, Americans already here also have done well. They actually have strengthened the society in many ways. As explained in detail in Chapter VI, immigration continues to be of great benefit to the United States and continued immigration at levels comparable to that of recent years is clearly in the interest of the nation. For the United States, immigration, at least at the level discussed here, presents an unusual situation in which humanitarian concerns and national self-interest are mutually compatible.

According to the research findings explained in Chapter VI, the admission of immigrants and refugees not only reunifies the families of U.S. citizens and U.S. resident aliens, enriches

U.S. cultural life and enhances U.S. leadership in world affairs, it actually aids economic growth in the United States as a result of the entry of ambitious, hard-working persons and their children. It increases the pool of U.S. workers to support the United States social security system and to strengthen its manpower capabilities. Even the contribution of refugees appears to be overwhelmingly positive though their initial impact on U.S. society places them in competition for services with others also in need. But over time, their contributions are like those of immigrants. They work hard, plan, save, invest and contribute to the economic, social and cultural well-being of the United States.

The U.S. National Interest and U.S. Leadership in World Affairs

In considering national interests in relationship to immigration, most people think first of the economic benefits which immigration confers. Yet, the acceptance of immigrants and refugees by the United States unquestionably strengthens its stature in the eyes of millions of persons everywhere. That this is a "liberties" country is a message spread by immigrants and refugees from Havana to Minsk. That hundreds of thousands of persons wish to leave the Soviet Union and other totalitarian countries is a fact not lost on the global village consciousness of millions of persons. That millions would like to come to the United States remains the clearest, best and most distinctive sign of the triumph of an open, free society.

Now that the United States has become a great world power, often on the defensive against movements for change which threaten the peace and safety of the world and American interests, it is hard for some persons to appreciate the extent to which this country has always been a symbol of revolutionary freedom for persons around the world. Throughout the nineteenth century, revolutionary freedom fighters found a haven in the United States where, in some cases, they wrote democratic constitutions for nations yet to be born and planned the overthrow of oppressive governments. It was to the United States that Sun Yat-sen, China's first great revolutionary leader, came for inspiration as well as refuge. It was in the United States that Edward Benes and Czech emigres planned the creation of a free and democratic Czechoslovakia. It was here that Ramon De Valera, leader of the movement to free Ireland and establish the Irish Republic, found refuge and gained support for his eventual triumphant return to Ireland.

It was to the United States that Louis Kossuth, the leader of the mid-nineteenth century freedom movement in Hungary, came for inspiration, support and refuge. On December 5, 1851, he and fellow Hungarians and a few Italian refugees entered Lower New York Bay, where a crowd of 200,000 persons crammed the Battery in Lower Manhattan to welcome the leader of the struggle for Hungarian independence. Shore batteries fired salutes from Staten Island, bands played, and a parade into New York City was followed by speeches of welcome in German, Spanish, Italian and English at a mass meeting of 20,000 persons where an admission charge brought in $20,000 for a Hungarian refugee fund. In Washington, after receptions at the Executive Mansion and on Capitol Hill, Kossuth was honored at a congressional banquet whose speaker, Secretary of State Daniel Webster, addressed the aspirations of the American people for Hungarian independence.

In recent years, the United States has begun to reassert its concern for and hospitality toward a portion of those persons in the world who seek freedom from oppression, not just from Hungary, as in 1956, or other European countries, but from Asia, and in slightly increasing numbers, from Latin America and Africa, too. In so doing, it corrects the image which many in the world have of the United States as a country that, being wealthy, can afford to be smug and indifferent to the fate of others.

It reasserts what has been the great role of the republic since its inception, to provide opportunity not just for its own people but some measure of hope for others around the world who seek freedom. In a letter to the Select Commission, former Secretary of the Treasury W. Michael Blumenthal eloquently expresses the possibilities open to immigrants

> I immigrated to the United States, arriving in San Francisco in September, 1947, as part of a group of stateless refugees from Nazi Germany who had been detained by the Japanese in Shanghai during the second World War. . . . We went to China because in the pre-World War II period, U.S. immigration laws, based on country of origin quotas, were highly restrictive and allowed only a few persons to come to the U.S. directly. Most of those left behind in Europe died in the holocaust.
>
> . . . A special Act of Congress was passed in 1946 for stateless refugees and displaced persons to come to the United States. . . . Most of my group . . . seem to have done well in various occupations and professions in the U.S. in the course of the last 35 years.
>
> I, of course, was exceedingly fortunate. By working part time, I managed to get a virtually free college education at the University of California and was then granted a fellowship for graduate study at Princeton University. . . . Fourteen years after coming to the United States as a displaced person, I joined the Department of State as a Deputy Assistant Secretary and two years thereafter was proud to be sworn in as a United States Ambassador, representing my adopted country.

> My rising to Cabinet rank does, I believe, stand as a tremendous tribute to the basic decency of the American people and to their continuing belief in the American tradition--that what counts is not where a person comes from or who he or she is but rather what a person can do.[1]

The U.S. National Interest and Strengthening American Cultural and Language Resources

Leadership in world affairs depends on much more than the image which the United States presents to the world. It depends on the skills, will, unity and economic strength of its people. Among those skills which immigrants and refugees bring to the United States are strong cultural and linguistic resources.

In 1980, The President's Commission on Foreign Languages in the United States emphasized the severe deficiencies which Americans now face concerning second- and third-language resources. Compensating for that deficiency is not just a matter of national economic well being but also of national security.

Leadership in world affairs depends in part on understanding other nations. Understanding them means understanding their languages and cultures. Partly because of its history of immigration and the eclectic way in which it absorbs and borrows from other cultures, the United States increasingly has become a center of international diplomacy and business. Its high-ranking diplomatic, military and intelligence officers represent major nationalities from all over the world. It is increasingly able to conduct flourishing export and import businesses with dozens of countries with which it had little contact, partly because of immigration.

Apart from the practical benefits--economic and diplomatic--which accrue from strengthenning multilingual and cultural resources, immigration provides a steady source of renewal and revitalization of American cultural and scientific life. It has played an unusual and disproportionate role in making the United States the leading country of the world in most of the sciences and in the arts and literature.

More than 30 percent of the American Nobel prize winners now living are immigrants, as are 25 percent of the members of the American National Academy of Sciences. Among the dozens of individuals who enrich the United States and who we claim as Americans are actors, such as Sidney Poitier (Jamaica); architects, such as I.M. Pei (China); scientists, such as Edward Teller (Hungary); athletes, such as Martina Navratilova

(Czechoslovakia); sculpors, such as Louise Nevelson (Russia); dancers, such as Mikhail Baryshnikov (Soviet Union); musicians, such as Vladmir Horowitz (Russia); and Nobel prize-winning writers, such as Isaac B. Singer (Poland) and Saul Bellow (Canada).

It is not just the extremely talented refugees and immigrants--such as Albert Einstein or Aleksander Solzhenitzyn--who have made such strong contributions to the United States; less famous persons have helped to originate and staff ballet throughout the country. In addition, it is often the children and grandchildren of ordinary immigrants who make extraordinary contributions to the evolution of distinctive American artistic expressions. Without immigration in the decades before and after the turn of the century there would have been no Rhapsody In Blue or Porgy and Bess (George Gershwin); no God Bless America (Irving Berlin); and no Oklahoma (Richard Rodgers and Oscar Hammerstein). How many such talents and contributions were lost to America because of its restrictive, discriminatory immigration policies of the 1930s will never be known.

The U.S. National Interest and Economic Growth

Chapter VI spells out in some detail the latest research findings on the economic impacts of immigrants and refugees in the United States. It is generally agreed among economists that immigration has contributed and is continuing to contribute to overall economic growth. It increases the return to workers who do not compete with the immigrants, and to capital held by residents, thereby increasing the average income of Americans generally. To the degree that immigrants are skilled workers, not only overall economic growth, but productivity (output per worker) is increased too.

This is not to say that immigration should be thought of as a major tool or a principle for achieving economic growth in the United States. It is to assert that immigration in recent years, even though the scale has been much lower than that of earlier times, has made a modest and not insignificant contribution to the American economy.

As Professor Julian Simon puts it, the net economic effect of immigrants after four or five years as a whole is "positive and large" [and] when we value the streams of future costs and benefits the way we compute the present value of any other investment, the rate of return from immigrants to the citizen public is of the order of 40 percent per annum, a remarkably good investment for anyone's portfolio."[2]

Another economist, in plotting the rate of annual growth of the total national income resulting from recent increases in immigration, projects that the growth by 1990 will be two thirds of one percent greater annually than it would have been without the increases in immigration which have taken place since 1965.[3]

In earlier times, the contribution was much greater. In A Century of Population Growth (1909), the U.S. Bureau of the Census estimated that during the nineteenth century immigrants added 30 million persons to the American population and contributed $40 billion to the nation's wealth. The report pointed out that those sections where immigrants settled developed into the wealthiest parts of the country whereas those with the smallest proportion of foreign born became the poorest. It was a fact understood by James Madison, who said at the Constitutional Convention; "that part of America which has encouraged them [the foreigners] most, has advanced most rapidly in population, agriculture and the arts."[4]

Generally, immigrants raise the aggregate income of the American-born population, even though they compete with some American workers whose real wages may be lowered as a result. One economist explains that although immigrant electricians might cause competition for native electricians, reducing their wages somewhat:

> "On the other hand, electricians are complementary to many other types of labor, such as plumbers and carpenters, because construction requires the service of all three. Increasing the supply of electricians makes construction cheaper and hence increases both the amount of construction and the demands for the necessary services of other construction workers, actually increasing the real earnings of plumbers and carpenters. It also increases the real earnings of workers in unrelated industries who directly or indirectly purchase the services of electricians."[5]

One of the ways in which immigrants and refugees contribute disproportionately to economic growth is through their entry into small business. Testimony before the Select Commission concerning the Vietnamese refugees and immigrants who have settled in Arlington, Virginia, provides an example of such entrepreneurship. Now constituting close to five percent of the total resident population, the Vietnamese represent one of the highest concentrations of Indochinese in any small city (Arlington has a population of 163,000) in the nation. Arlington, according to the testimony of Thomas C. Parker, Deputy Planning Director for the County, has become a center for Vietnamese merchants. He reported to the Commission: "There is no question that the Vietnamese-Indochinese merchants carried the Clarendon area through its bottoming out period of decline . . . had it not been for the Vietnamese merchants, the Clarendon area would very likely have suffered an even greater sales loss in this period . . . Clarendon could have easily been turned into a commercial slum . . ."[6]

These merchants and their relatives were not wealthy immigrants. They were refugees with little capital but a strong desire to work and succeed. As Mr. Parker asserted:

> "The Vietnamese and Indochinese immigrants have also reinforced the local economy through their acceptance of entry-level jobs in virtually every sector of the market place. Positions that historically have been difficult to fill, have been filled with newly arrived immigrants eager to learn and excell. To many of the immigrants these jobs are a first step to more responsible positions, and in many cases businesses of their own."[7]

Select Commissioners and staff have observed immigrant and refugee activity which contribute to economic growth. In Fall River, Massachusetts, recently arrived Portuguese immigrants have kept a large shirt manufacturing establishment alive by supplying semi-skilled labor and, as a consequence, have revitalized old decaying neighborhoods. Their foreman, interestingly enough, a native of India, was going to Boston to become an American citizen the day after the Commission's visit to the factory.

In San Jose, California, Mexican immigrants have filled key roles in a booming electronics industry; in Miami, Florida, the economic contributions of a one half-million Cuban Americans have integrated the Miami economy with Latin America to make that city virtually recession proof; in San Antonio, which has recently elected a Mexican American mayor, the economy has been stimulated by the labor and entrepreneurship of Mexican nationals; in Los Angeles, California, 200,000 Korean Americans have turned a decaying inner-city neighborhood into an economically vital city center.

Korean and Cuban immigrants particularly have become known for their entrepreneurial qualities similar to those attributed to Jewish, Chinese and Greek immigrants in earlier times. With more than 6,000 small businesses in and around the Los Angeles area managed by people of Korean descent, thousands of jobs have been created for non-Koreans, too.

The Cuban story in Miami is sighted often as a economic miracle. Although the Saturday Evening Post had warned in 1962 that the economy of Miami would be "unable to accommodate the heavy flow of refugees," by 1967, Miami Cubans owned 919 businesses, and by 1980 the number had increased to 18,000.[8] As Senator William Proxmire (D-Wisconsin), concluded after reading one major study of the economic impact of Cubans on the Miami area, "An unprecedented prosperity has been created in Miami as a direct result of its transformation by the virtue of the very presence of the Cubans."[9]

As in the past,* there are today dozens of executives who were born and raised in other countries and now are at the top of American corporations. Not all of them come from older countries of immigration, although many do as was the case with

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*Examples of individual immigrants who rose to positions of economic leadership, creating jobs for thousands, are legion in American history: Andrew Carnegie, Scottish, who played a major role in the development of the steel industry; Samuel Slater, English, in the cotton industry; John Jacob Astor, German, in the fur industry; Michael Cudahy, Irish, in the meat packing industry; Henry Lomb and John Jay Bausch, German, in the optical industry; Joseph Bulova, Czeck, the watch industry; Giuseppe Theliabue, Italian, thermometers; Charles L. Fleischman, Hungarian-Jew, yeast; David Sarnoff, Russian-Jew, radio; Frederick Weyerheuser, German, the lumber industry.

W. Michael Blumenthal, whose letter appears earlier in this chapter. Blumenthal was born in Germany but spent eight years in Shanghai, came to the United States at the age of 21 and rose to be the head of the Bendix Corporation before he was named Secretary of the Treasury. Others include Charles G. Bluhdorn, who was born in Vienna and heads Gulf and Western Industries; Harry Wexler, born in Rumania, who now heads the chemical operations of Beatrice Foods; Zoltan Merscer, born in Hungary, who is now Vice Chairman of the Board of Occidental Petroleum Company and Paul F. Oreffice, who is now President and Chief Executive of The Dow Chemical Corporation, and who wrote the Select Commission:

> The reason [I came to this country] was that my father, a fiercely independent thinker, was not a member of the Fascist Party. . . . We lived in Venice, Italy and one day my father was called in by the head of the Fascists and upon arriving was beaten for several hours, then jailed and held incommunicado. . . . He was found innocent of some 25 trumped-up charges such as supposedly saying the horse we owned was more intelligent than Mussolini. Even after being found innocent, he was under political surveillance and we had to leave as rapidly as possible. . . .
>
> We stayed in the U.S. for a few months but then lacking our permanent visa we went to live in Ecuador. . . . My father and I had to travel in steerage because we only had enough money to let my mother and sister travel second class.
>
> As soon as the war ended, I returned to the United States with a permanent visa in 1945 and immediately went to Purdue University from where I graduated in 1949. In

> 1950, I was drafted into the Army and strangely enough I was in uniform when I obtained my citizenship after the necessary five-year residence requirement.
>
> When I first went to Purdue, my English was so ragged that I had to spend every evening until 3:00 or 4:00 A.M. studying with a dictionary in front of me trying to figure out what the professors had said in the classes. . . .
>
> It is difficult for someone born and raised in this great country to realize how much it offers and what it means to people like me who came almost friendless and penniless. . . . When I first came to Midland, Michigan, this was a typical mid-Western conservative, WASP community. There was no doubt that I was "different" and even the fact that I didn't part my hair and combed it straight back appeared to be a deterrent. The wonderful thing about the people here is they didn't let any of these real or imagined differences (plus the fact that I spoke with an accent and so forth) stand in the way when they felt I was getting the job done and eventually in 1978 they thought I was the man to lead the company. . . . Only in America.[10]

Persons from the more recent immigrant groups have taken leadership roles in large corporations, too. Ong Wang, who grew up in China, founded the Wang Laboratories Computer Company. Jessie Aweida, a Palestinian immigrant, builds storage technology; and in 1980, the Coca-Cola Company chose a Cuban immigrant, Roberto C. Goizueta, to be its president and chief operating officer.

Much more typical, of course, are the stories of the smaller entrepreneurs, the Mom and Pop stores, the little businesses that sometimes grow to be middle-sized businesses. In testimony before the Select Commission in New York City, Mr. Samuel B. Kong recounted during the open-microphone session how he had come to the United States 12 years earlier from British Guyana, a poor young man who earned $64 a week at his first job while studying at school four nights a week. Now the vice president of a small electronics manufacturing corporation, which employs 12 workers, in a high unemployment area in New Jersey, Mr. Kong pleaded with the Select Commission to continue the U.S. tradition of immigration.[11]

E Pluribus Unum: The Future of American Pluralism

Whatever the numbers and criteria for selecting immigrants in the future, recent immigration to the United States has already made a significant impact on the landscape of American pluralism. As shown in Chapters VI and VII, the composition of immigration changed substantially after 1967. Between that year and 1976, immigration from North America, principally Mexico, increased by 43.5 percent and immigration from Asia by 369.2 percent while immigration from Europe decreased by 27.4 percent. By 1977 and 1978, Asia accounted for 41.5 percent of all immigration compared with less than 8 percent in the last decade when immigration policy was based on national origins quotas. A substantial portion of those immigrants are persons who adjusted their status after being admitted as refugees from Indochina, a situation not likely to occur in the foreseeable future. But the fact is, that not only has immigration gone up, its composition has changed. Now that a large proportion of immigrants--legal and illegal--are neither Protestant nor white nor European, the question is once more being raised: How fares E Pluribus Unum?

The answer, despite the strains and tensions that exist in the process of migration, is resoundingly positive. None of this is to discount the widespread unhappiness which Americans share over an immigration policy out of control, their displeasure at having large numbers of undocumented/illegal immigrants come to this country, and especially their intense anger over the Cuban push out of 1980. Many disadvantaged black and white Americans look at refugee programs and wonder--why them? Some descendants of older European immigrants challenge the application of affirmative action programs to newcomers, and Americans generally are concerned about our national unity. Further, none of this denies the many problems that develop when large numbers of foreigners suddenly arrive in a city or the apprehension many Americans feel concerning the perpetuation of ethnic-linguistic enclaves and the sponsorship by the federal government of bilingual education and bilingual services.

People are concerned about national unity. They want to know what it is that holds our people--with all their cultural diversity--together as a nation. They ask: Will the new immigrant groups become Americanized? Will they accept the fundamental values and participate in the major institutions of the society?

These questions were of great interest to Commission members. Despite the apprehensions of Americans with regard to these questions, it became apparent in the course of our investigations--through site visits and testimony at public hearings as well as research--that the new immigrants are making considerable progress in becoming Americans.

Several examples, while outstanding, are not atypical of developments all over the country. In Los Angeles, California, where riots against Mexican Americans plagued sections of the city during World War II, the Evans Adult Community School serves 8,000 students from 81 countries who attend classes there in three shifts while holding jobs as self-supporting immigrants.

In Evans' crowded classrooms of 30 to 40 students, we watched them working hard with good humor in stifling temperatures near 100 degrees in beginning, intermediate and advanced English classes under the careful and imaginative guidance of English-language instructors. On the other side of the city, we saw teenage Koreans reading Tom Sawyer, Huckleburry Finn and other American classics in English and Korean (on alternative pages). In Nashville, Tennessee, where segregation of dark-skinned persons was once commonplace, the city government has embarked upon an energetic program to help integrate Laotian refugees into the community through cooperative loan arrangements. In Iowa, where a governor once forbade the speaking of German in public places, refugee resettlement practices have been developed and are a model for the nation.

At least as impressive as the efforts of city, county and state governments, has been the extraordinary response of voluntary agencies and American citizens in sponsoring refugees and easing the adjustment of immigrants to this country. Catholic, Protestant and Jewish organizations, among others, have tapped the unusual volunteer resources for which the United States always has been famous. In New Orleans, the U.S. Catholic Conference has organized one of the largest and most successful resettlement efforts in the country--about 16,000 refugees (mainly Vietnamese) in the past five years--by emphasizing the capacity of refugees to help themselves. Visits to the Cleveland Ohio, and Brooklyn, New York, offices of the Hebrew Immigrant Aid Society, an organization that is benefited by block grants to assist immigration resettlement, revealed extensive talent and ability on the part of volunteers who help refugees with medical, vocational, educational and family problems.

Both local governments and volunteer agencies have produced a variety of programs and literature to help in the Americanization process. One excellent booklet, published by the National Council of Jewish Women in New Orleans for Vietnamese and Soviet refugees, imaginatively covers every topic from history and government in the United States to medical and dental services. Business and labor groups have set up programs to help refugees and immigrants, too. One unusual example is provided by the Rochester firm of Hickey-Freeman Company, Inc., which hires immigrant tailors to make their custom-made clothing. In an attempt to prepare its workers for effective citizenship, Hickey-Freeman now is conducting its eighth consecutive naturalization class with the cooperation of the Amalgamated Clothing and Textile Workers Union, the District Director of the Immigration Service in Buffalo, the State Education Department and county officials.

Most impressive of all, perhaps, is how the new immigrant communities themselves have organized self-help groups in the American tradition. Coming from cultures which often did not have such groups and did not really understand the concept of volunteer, they have mobilized the energy of their own people. In Dade County, Florida, Haitian refugees and American social workers run the Haitian Refugee Center together, while a half-hour away is the Cuban Community Center that houses all of the services that refugees need--job counseling, housing information and medical referrals.

New groups of immigrants and refugees, also in the tradition of earlier groups, have created journals and newspapers to help themselves make the transition to American life and have developed programs for use by local radio and television stations in an effort to speed that passage.

There is no question that such a transition is the goal of the overwhelming majority of newcomers. They see in the United States an opportunity to retain ties to their ancestral cultures while becoming Americans. Cherishing some of the traditions of their ancestors, they embrace the American civic culture. As one refugee at the Soviet Jewish Refugee Center in Brooklyn, New York, said, when explaining that he was thankful to be safe in a land where his family could live in freedom, "I am glad to be here because my son will be an American and he will also be Jewish."[12]

It is the second generation which presents the greatest challenge to E Pluribus Unum and it falls to the schools to play a central role in the Americanization process. In the course of its site visits, the Select Commission visited a great many schools, where the evidence is overwhelming that refugee and immigrant children are adapting well. If American history is any guide, the generation of children born in the United States will perhaps be too eager to cast away their cultural inheritances. At Abramson High School in New Orleans, where a disproportionate number of refugee children are on the honor roll, we saw the effectiveness of the immersion method in teaching English as a second language. At Cheltenham School in

Denver, Commission staff members met an eight-year-old Soviet Jewish refugee from Leningrad who spoke seven languages (including English and Spanish that he had learned since coming to Cheltenham only five months before).

Located in an Hispanic neighborhood where 50 percent of the bilingual classes were in Vietnamese, one Vietnamese third-grader at Cheltenham pointed proudly to George Washington's picture on the wall to identify the first president as "the father of our country." At Edgewood Competency Based High School in San Antonio, we saw the effective teaching in English of survival skills to refugees and immigrants: How to prepare a budget, maintain health care, fill out a ballot and register to vote. In Los Angeles at the Castellar Elementary School, Dr. William Chun-Hoon, the grandson of poor immigrants to Hawaii (now the successful owners of Chun-Hoon Supermarkets) served as a principal in a school where 40 percent of the students were either refugees or immigrants. Looking healthy and relaxed for the most part, the youngsters, many of whom were wearing Cub Scout uniforms, played basketball and chattered noisily in American slang in the school yard, revealing once more the power of the process of Americanization.

Despite the evidence of rapid acculturation (as reported in Chapter VI), the Commission heard from many Americans who are afraid that the new immigrant and refugee groups will somehow contaminate or undermine American culture and national unity. In part, the reaction is caused by the age-old fear that the newcomers, the strangers, will take something away from those of us who were here first. One of the great satirists of American history, Finley Peter Dunne, expressed it through his marvelous character, Mr. Dooley, the bartender:

> 'As a pilgrim father that missed th' first boats,' commented Mr. Dooley, the philosopher of Archey Road Tavern,' I must raise me claryon voice again' th 'invasion iv this fair land be th' paupers an' annychists effete Europe. Ye bet I must--because I'm here first.'[13]

Of course, the Irish themselves had been resisted fiercely when they came as immigrants throughout most of the nineteenth century. Fear of the contamination of American ways usually is part of a deeper fear that the Republic itself will be undermined. The Irish would serve the Pope and Rome; the Japanese the Imperial Emperor; the Jews, an international conspiracy; the Germans, the Fatherland. Actually, new groups zealously attach themselves to American ideals and values while still connected to their cultural past. That there is no incompatibility between American loyalty and cultural memory is made clear in almost every major city of the United States during its particular version of its festival of ethnic groups. Typical of them is the annual Philadelphia Folk Fair where, for more than three days, more than 50 groups celebrate their attachment to both American ideals and institutions and to the cultural gifts of their ancestors. Actually, Philadelphia may see as many as 98 groups participating in its folk festival some day since that is the number of ethnic groups now served by the Nationalities Service Center, one of the oldest voluntary organizations working to help newcomers adapt to American life.

The genius of the American system has been that loyalty to the United States is compatible with other ties of affection--regional, local, religious and ethnic. The ties which bind Americans are the ideals of individual freedom and equality of opportunity, regardless of ethnicity or other social characteristics.

The greatest tests of ethnic-group loyalty to the United States came during two world wars. During World War I, many Americans were particularly afraid that Irish-Americans and German-Americans would be disloyal. The Ambassador to Great Britain, Walter Hines Page, expressed his "fundamental conviction" in June 1916 that "we Americans have got to . . . hang our Irish agitators and shoot our hyphenates." [14]

The Irish were seen as a threat mainly because they were Catholic and partly because of their identification with the cause of Irish independence. The issue of the loyalty of American Catholics was never finally resolved until the election of John F. Kennedy as president, despite their strong participation in the Army of the Republic during the Civil War and the American armed forces during World War I.

The loyalty of German-Americans were suspect even in the twentieth century because of the tenacity with which they clung to the German language and culture. With the beginning of World War I, attacks on the loyalty of Americans of German descent became widespread. Some were tarred and feathered and made to kiss the American flag. One man was lynched. The newspapers frequently featured attacks on the loyalty of German-Americans even as ex-President Theodore Roosevelt and President Woodrow Wilson raised doubts as to their devotion to the American cause.

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Although a large number of German-Americans sympathized with the Germans in their war against England, most German-American organizations quickly declared their loyalty to the United States when it was attacked. They actively promoted the sale of war bonds and supported Red Cross activities. Yet, the anti-German-American hysteria continued. In Iowa and South Dakota, the German language was prohibited in the public and private elementary and secondary schools, over the telephone and in assemblies of three or more persons in any public place. It was not until the war ended--and German-language and cultural organizations had been destroyed--that the question of German-American loyalty was buried. By the time of World War II, a descendant of German immigrants, Dwight D. Eisenhower, was chosen to lead the Allied invasion of Germany itself.

While the issue of German-American loyalties surfaced only slightly in World War II, the attention then was given to Japanese-Americans. Following the attack on Pearl Harbor on December 7, 1941, panic swept the West Coast and the islands of Hawaii, where large numbers of Japanese-Americans lived. Many were not citizens because they were barred from naturalization if they had been born in Japan. Because of Japanese-language schools, churches, Shinto shrines and cultural organizations, even the loyalty of citizens was suspect. On the mainland, 110,000 aliens and citizens were interned in relocation camps without due process of law. One prominent politician in Hawaii said, "a Jap is a Jap even after 1,000 years and they can't become Americanized."[15]

Like the Germans and the Irish before them, Japanese-Americans proved their loyalty. When the war broke out, Americans of Japanese ancestry were removed from the National Guard and denied permission to serve their country in uniform, but the idea of a nisei (the first generation of Japanese-Americans born in the United States) combat group was finally accepted and in June of 1942, The 100th Battalion comprised of nisei National Guardsmen and draftees from Hawaii was organized. When a call went out for 2,500 volunteers, five times that number responded, or more than one-third of all the military-age males of Japanese ancestry in Hawaii, giving birth to the 442nd Regimental Combat Team.

Between them, the 442nd and the 100th furnished 60 percent of Hawaii's fighting forces and 80 percent of the casualties. The 442nd--the most decorated regiment in the Army--was cited ten times by the War Department for outstanding accomplishments.

Of the 7,500 men on its rolls at one time or another, 5,000 were awarded medals, of which 3,600 were for battle wounds; 700 never came back, 700 were maimed and another 1,000 were seriously wounded.

Recently, questions of civic responsibility and political loyalty have been raised concerning Mexican Americans. Like Irish Americans, they are overwhelmingly Catholic; like German Americans in earlier decades, they cling to their ancestral language; like Japanese Americans in times past, they have low rates of naturalization.

But there is no reason to believe that Mexican Americans will not continue to be loyal to the United States. In World War II, 350,000 Mexican Americans served in the U.S. Armed Forces with 17 medals-of-honor winners among them. In recent years, they have served in the United States House of Representatives and Senate and as governors of states, as members of State legislatures, as American Ambassadors, as federal and state judges, and as soldiers in the Korean and Vietnamese Wars. Among naturalized citizens, according to one study,[16] electoral participation is 71.1 percent far, above the national average.

Such activity does not change the fact that Mexican immigrants have low rates of naturalization. Nor should it obscure the fact that Mexican immigrants along with French-Canadian immigrants report the most difficulty in speaking English, according to a Select Commission study.[17]

But these facts have not and do not interfere with the demonstrated, overriding loyalty of Mexican Americans who have served this country well in so many capacities. There are few of us who followed the ordeal of the American hostages in Iran in 1980 who will fail to remember Sergeant Jimmy Lopez and the words which he wrote on the wall of the room where he had been imprisoned, "Viva el rojo, blanco y azul" ("Long Live the Red, White and Blue").

The American experiement--E Pluribus Unum--should never be taken for granted. It needs constant care through public policies which nurture common values and the common good. A sound immigration policy will promote many U.S. national interest goals but will not by itself promote national unity or purpose. That will depend on a continued emphasis in our law and culture on respect for freedom and equality of opportunity. With these values and the institutions based on them to unite the nation's peoples, it is possible also to maintain respect for the cultural diversity which is produced partly by immigration. With an immigration policy guided by the principles of the open society, the rule of law and international cooperation, it should be possible to remain a nation of immigration for many years to come.

Footnotes

1. See Letter File, Select Commission on Immigration and Refugee Policy papers, National Archives.

2. Julian L. Simon, "How Do Immigrants Affect Our Standard of Living," paper presented to the Select Commission on Immigration and Refugee Policy, p. 5.

3. Edward Denison, The Source of Economic Growth in the United States and the Alternatives Before Us, (Washington, D.C.: Committee for Economic Development, 1962), pp. 275-277.

4. Max Farrand, ed., Records of the Federal Convention of 1787, 4 vols.

5. J. Huston McCulloch, "Immigration Barriers," Policy Report 2 (February 1980): 4.

6. Thomas C. Parker, Deputy Planning Director for Arlington County, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Baltimore, Maryland, October 28, 1979.

7. Ibid.

8. "Our Refugees from Castroland," Saturday Evening Post, June 16, 1962.

9. Congressional Record, August 4, 1980, p. 10630.

10. Paul F. Oreffice to the Select Commission on Immigration and Refugee Policy, Letter File, Select Commission papers.

11. Samuel B. Kong, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, New York, New York, January 21, 1980.

12. Conversations of Commission staff with anonymous refugee at the Soviet Jewish Refugee Center, Brooklyn, New York, January 22, 1980

13. Finley Peter Dunne, Observations by Mr. Dooley, (New York, Harper, 1906), p. 50.

14. Frederich C. Luebke, Bonds of Loyalty: German-Americans in World War I, (DeKalb, IL:: Northern Illinois University Press, 1974), p. 156.

15. Lawrence H. Fuchs, Hawaii Pono (New York: Harcourt Brace and World, 1965).

16. John A. Garcia, "Integration of Mexican Immigrants Into The United States Political System," paper prepared for the Select Commission on Immigration and Refugee Policy (Ann Arbor: University of Michigan, 1981). This paper was based on a 1979 survey of Mexican-Americans in five southwestern states and Chicago. Also see, Douglas E. Foley, From Peons to Politicals: Ethnic Relations in a South Texas Town, 1900 to 1977, (Austin: University of Texas Press, 1977).

17. See "The Acculturation and Integration of Immigrants and Refugees: An Analysis of 1976 Data," staff paper, Select Commission on Immigration and Refugee Policy.

PART II: THE OPEN SOCIETY

CHAPTER V: IMMIGRATION AND U.S. HISTORY-- THE EVOLUTION OF THE OPEN SOCIETY

As shown in the introductory essay, human migration is as old as human history. The first inhabitants to the New World, scientists believe, came when the last great Ice Age lowered the level of the Pacific Ocean sufficiently to expose a land bridge between Asia and North America, enabling people to cross the ocean from Asia. Recent evidence suggests that the ancestors of the present-day native Americans settled in North America more than 30,000 years ago and by about 10,000 B.C. had expanded their settlement as far as the tip of South America.

Some 116 centuries later, migration to America occurred again, this time coming from the opposite direction. European monarchs and merchants--whether Spanish, Portuguese, French, English or Dutch--encouraged exploration and then settlement

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*Lawrence H. Fuchs and Susan S. Forbes, principal authors.

of the newly "discovered" lands of the Americas. The descendants of the occupants of these lands, native American Indians, sometimes joke that the "Indians had bad immigration laws." In fact, there were a variety of responses. In some cases, Indian tribes welcomed the new settlers, negotiating treaties, many of which were abrogated by the colonists. In other instances, the Indians fought newcomers who encroached upon their lands. Whatever the response, though, most tribes found themselves overwhelmed by the better-armed Europeans.

The continents of the Western Hemisphere soon became a microcosm of the European continent, peopled in the north by northern and western Europeans and in the south by the Spanish and Portuguese.

Because of the diversity of national origins, it was by no means certain at the time of English settlement that those who spoke the English language would dominate the development of the area that eventually became the United States. To the south of the British-occupied territories were Spanish colonies, to the north were the French, between were Dutch and Swedish settlements. By the second half of the eighteenth century, though, the French had been defeated and had withdrawn from

Canada, a modus vivendi of sorts had been established with Spain and the small Dutch and Swedish settlements had been incorporated into the middle colonies of New York, New Jersey, Pennsylvania and Delaware. Hence, it was a certainty by the time of the Revolution that the newly formed republic would be one in which the English influence would prevail.

Despite Anglo-American dominance, however, the colonial period saw the establishment of a tendency towards ethnic pluralism that also was to become a vital part of U.S. life. At least a dozen national groups found homes in the area. Most came in search of religious toleration, political freedom and/or economic opportunity. Many, particularly some ancestors of those who later thought of themselves as "the best people," came as paupers, or as bond servants and laborers who paid for their passage by promising to serve employers, whom they could not leave for a specified number of years. Not all came of their own free will. Convicts and vagrants were shipped from English jails in the seventeenth century. Beginning in Virginia in 1619, some 350,000 slaves were brought from Africa until the end of the slave trade in 1807.

Non-English arrivals were treated with ambivalence, whether they were Dutch, German or even Scotch-Irish Presbyterians from Great Britain. The Germans who came to Pennsylvania, for example, had first learned of the colony through an advertising campaign designed by William Penn to attract their attention and migration. The earliest German settlers came in the hopes of finding liberty of conscience, and once their glowing reports were sent back to Germany, others of their nationality--seeking not only religious toleration but economic opportunity--followed. They were welcomed by many English colonists who applauded their industry and piety. Yet, they were attacked by others who questioned if they would ever assimilate.

This question asked about each successive wave of immigrants was to become a familiar refrain in U.S. history, but the ambivalence towards foreigners was by no means great enough during the colonial period to cause restrictions on immigration. In fact, the Declaration of Independence cites as one of the failings of King George III, and thus a justification for revolution, that "He has endeavored to prevent the Population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands."

After the revolution and the creation of a new government, Americans kept the gates of their new country open for several reasons. The land was vast, relatively rich and sparsely settled. At the time of the first census, taken in 1790, America had a recorded population of 3,227,000--all immigrants or descendants of seventeenth and eighteenth century arrivals.* The population density at that time was about 4.5 persons per square mile. Labor was needed to build communities as well as to clear farms on the frontier and push back the Indians. People were needed to build a strong country, strong enough to avoid coming once again under the rule of a foreign power. Moreover, many U.S. citizens thought of their new nation as an experiment in freedom--to be shared by all people, regardless of former nationality, who wished to be free.

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* More than 75 percent of this population was of British origin, another eight percent was German and the rest were mainly Dutch, French or Spanish. In addition, approximately a half million black slaves and perhaps as many Native Americans lived within the borders of the United States.

Despite all of these reasons for a liberal immigration policy, some doubts still remained about its wisdom. Although people were needed to build the new nation, some feared that the entry of too many aliens would cause disruptions and subject the United States to those foreign influences that the nation sought to escape in independence.

With the signing of the Treaty of Paris in 1783, the United States was officially recognized as an independent nation and the history of official U.S. immigration policy began. The Constitution said little about the regulation of immigration other than in Article 1, part 1, section 9,--which then applied only to the slave trade:

> The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Naturalization of immigrants was addressed in Article 1, section 8, under which Congress was delegated the power "to establish a uniform Rule of Naturalization" and "to make laws which shall be necessary and proper for carrying into execution" that power.

Beginning in 1790, Congress passed a series of acts regulating naturalization. The first act permitted the liberal granting of citizenship to immigrants. After a heated debate--in which the losing side argued not only for strict naturalization requirements but also for barriers against the admission of "the common class of vagrants, paupers and other outcasts of Europe"[1]--Congress required a two-year period of residence and the renunciation of former allegiances before citizenship could be claimed.

By 1795, though, the French Revolution, and the ensuing turmoil in Europe, had raised new fears about foreign political intrigue and influence. A new naturalization act, passed in 1795, imposed more stringent requirements including a five-year residency requirement for citizenship and the renunciation of not only allegiances but titles of nobility. Still, some thought U.S. standards for naturalization were too liberal, and, in 1798, another law was passed that raised the residency requirement to fourteen years. At the same time, the Alien Enemies Act and the Alien Friends Act gave the president powers to deport any alien whom he considered dangerous to the welfare of the nation. One proponent of these laws explained his support: "If no law of this kind was passed, it would be in the power of an individual State to introduce such a number of aliens into the country, as might not only be dangerous, but as might be sufficient to overturn the Government, and introduce the greatest confusion in the country."[2]

The xenophobia that gave rise to the Alien Acts of 1798 passed with the transfer of power from the Federalist to the Republican Party in 1800. The two Alien Acts were permitted to expire, and, in 1802, a new Naturalization Act re-established the provisions of the 1795 Act--what was to become a permanent five-year residency requirement for citizenship. While the Republicans were by no means free of suspicion of foreigners, they were not sufficiently fearful of the consequences of immigration to impose any restraints on the entry or practices of the foreign born. Instead, they pursued a policy that has been aptly described by Maldwyn Allen Jones in his history, American Immigration:

> Americans had to some degree reconciled the contradictory ideas that had influenced the thinking of the Revolutionary generation and had developed a clearly defined immigration policy. All who wished to come were welcome to do so; but no special inducements or privileges would be offered them.[3]

For the next 75 years, the federal government did little about the regulation of immigration. It did establish procedures that made the counting of a portion of all immigrants possible. In 1819 Congress passed a law requiring ship captains to supply to the Collector of Customs a list of all passengers on board upon arrival at U.S. ports. This list was to indicate their sex, occupation, age and "country to which they severally belonged." At first only Atlantic and Gulf port information was collected; Pacific ports were added after 1850. Immigration information from Hawaii, Puerto Rico and Alaska dates only from the beginning of the twentieth century, as does the recording of information across land borders with Canada and Mexico.[4]

Although a fully accurate picture of the level of all immigration cannot be made, the data available have enabled historians to sketch the general composition and trend of U.S. immigration. These data show a steadily increasing level of immigration. Immigrants arriving between the end of the Revolutionary War and the passage of the 1819 act are estimated to have totaled about 250,000. During the next ten years, over 125,000 came, and between 1830 and 1860, almost 4.5 million European immigrants arrived in the United States.[5]

Never before had the United States had to incorporate so large a number of newcomers into its midst. At first, the new arrivals were greeted with enthusiasm. With a nation to be built, peasants from Norway were as welcome as skilled craftsmen from Great Britain and experienced farmers from western, Protestant Germany. The novelist Herman Melville characterized this spirit:

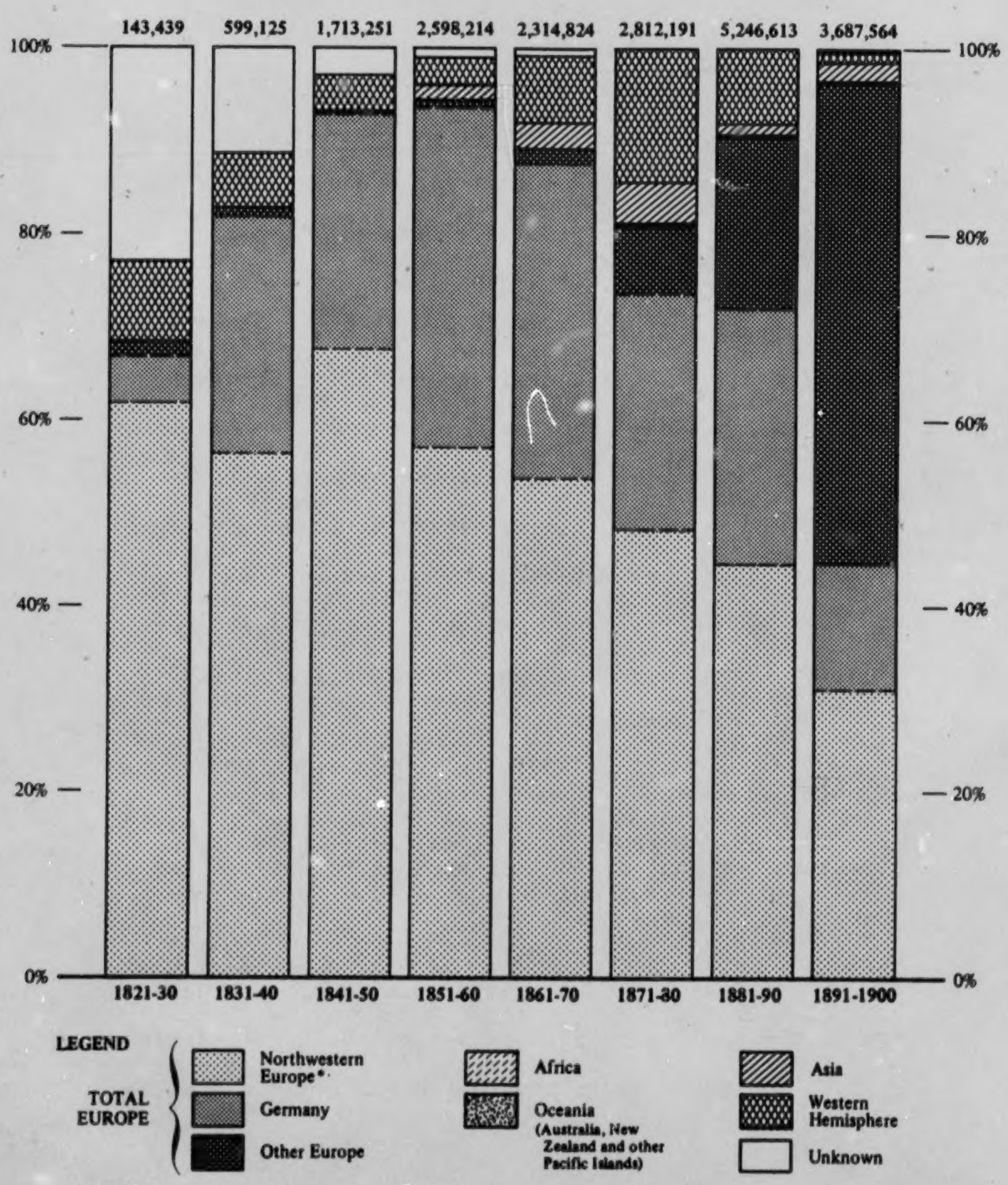
> There is something in the contemplation of the mode in which America has been settled, that, in a noble breast, should forever extinguish the prejudices of national dislikes.
>
> Settled by the people of all nations, all nations may claim her for their own. You cannot spill a drop of American blood without spilling the blood of the whole world. . . .
>
> We are the heirs of all time, and with all nations, we divide our inheritance. On this Western Hemisphere all tribes and people are forming into one federate whole; and there is a future which shall see the estranged children of Adam restored as to the old hearthstone in Eden.[6]

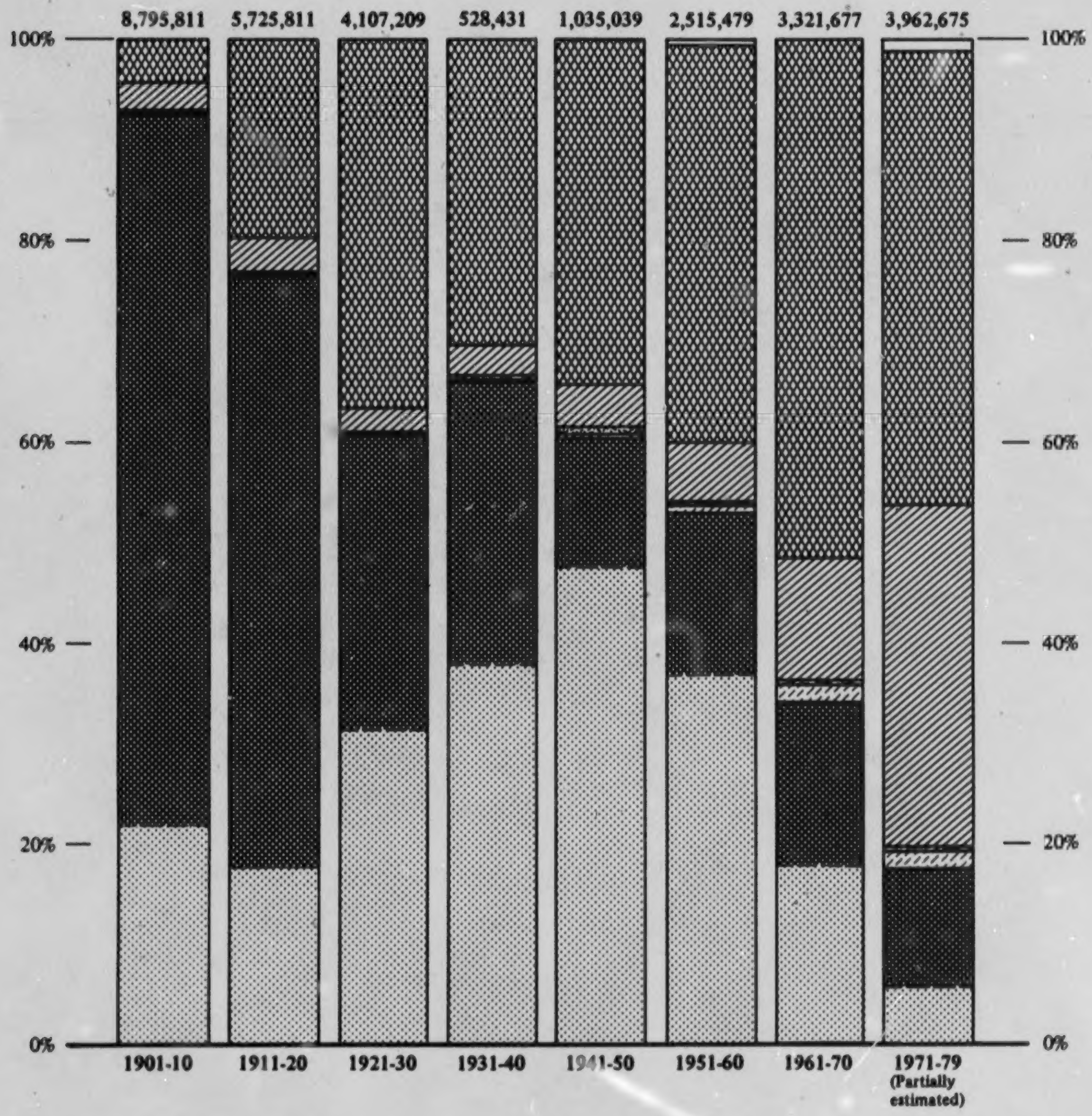
Beginning in the 1830s, though, the composition of the groups entering the United States began to change, and few U.S. residents thought so romantically about the new immigrants (see table on "The Origins of U.S. Immigration, by Region, 1821-1979). Waves of Irish during the potato famines and German Catholic immigrants flowed into the country during the European depressions of the 1840s. These Catholics entered a country that was not only overwhelmingly Protestant, but that had been settled by some of the most radical sectarians, who prided themselves on their independence from the Pope's authority as well as from any king's. To begin with, U.S. residents had brought with them from Europe centuries of memories of the Catholic-Protestant strife that had so long dominated that continent's social and political life. Much anti-Irish feeling arose from these roots and was nourished by an oversimplified view of Catholicism which saw Catholics as unable to become good citizens--that is, independent and self-reliant--since they were subject to orders from the church. Even before the mass immigration of Catholics during the 1840s and 1850s, the xenophobic inventor Samuel F.B. Morse warned his fellow Americans:

> How is it possible that foreign turbulence imported by shiploads, that riot and ignorance in hundreds of thousands of human priest-controlled machines should suddenly be thrown into our society and not produce turbulence and excess? Can one throw mud into pure water and not disturb its clearness?[7]

It was easy to blame these new immigrants for many of the problems of the rapidly changing, increasingly urban nineteenth century U.S. society. Hostility against immigrants grew as

THE ORIGINS OF U.S. IMMIGRATION, BY REGION, 1821-1979





SOURCES: 1821-1970– U.S. Bureau of the Census, Historical Statistics of the United States, Colonial Times to 1970. 2 vols. Washington, D.C.: U.S. Government Printing Office, 1975.
1971-1979–U.S. Immigration and Naturalization Service, Table 13, Annual Reports, and unpublished data.

*Includes immigration from Germany, 1901-79.

they were accused of bringing intemperance, crime and disease to the new world. The first Select Committee of the House of Representatives to study immigration concluded:

> that the number of emigrants from foreign countries into the United States is increasing with such rapidity as to jeopardize the peace and tranquility of our citizens, if not the permanency of the civil, religious, and political institutions of the United States. . . . Many of them are the outcasts of foreign countries; *paupers*, *vagrants*, and *malefactors* . . . sent hither at the expense of foreign governments, to relieve them from the burden of their maintenance.[8]

A Protestant magazine sounded a further alarm by suggesting that "the floodgates of intemperance, pauperism and crime are thrown open by [immigrants], and if nothing be done to close them, they will carry us back to all of the drunkenness and evil of former times.[9]

Out of these fears arose an alliance of those committed to saving the United States from the alleged dangers of immigration. Composed of social reformers who hoped to preserve the nation's institutions, some Protestant evangelicals who hoped to preserve the nation's morals and nativists who hoped to preserve the nation's ethnic purity, they formed associations, such as the secret Order of the Star-Spangled Banner, and political parties, such as the Know-Nothing Party.

These groups were committed to placing a curb on immigration itself and to ensuring that foreigners not be permitted to participate in the nation's political affairs. The naturalization statutes were a principal target of their concern. A pamphlet of the Know-Nothing Party warned of the inadequacy of these laws in protecting the nation against fraud:

> It is notorious that the grossest frauds have been practiced on our naturalization laws, and that thousands and tens of thousands have every year deposited votes in the ballot box, who could not only not read them, and knew nothing of the nature of the business in which they were engaged, but who had not been six months in the country, and, in many cases, hardly six days.[10]

The party hoped to avoid these problems by eliminating the participation of even naturalized immigrants in the political process.

At its most vitriolic, nativism manifested itself in anti-Catholic riots against the Irish. New York, Philadelphia and Boston all saw such violence. Exposes revealing the "truth" about Catholic nunneries--that they were dens of iniquity and vice--precipitated the burning of convents and Catholic churches.*

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* Not all convent-burning was indicative of anti-Catholicism per se. The burning of the Ursuline Convent at Charlestown, Massachusetts was due mainly to the local brickmakers'resentment of Irish economic competition.

Although strident, nativist voices did not prevail. Attacks on ethnic groups usually came from a small, but vocal portion of the population that by no means represented the wishes of all Americans. Even during the times in which nativism reached its peak, there continued to be a variety of potent support for unlimited immigration. Economic needs, reinforced by the ideals of opportunity and freedom that were more deeply rooted in the country than was the anti-Catholic heritage or fears of foreign takeover, worked against restricting immigration or making requirements for citizenship or voting more stringent.

After the Civil War, the country's desire for immigrants seemed insatiable, as discussed in the introductory essay. Railroads were being laid across the nation, thus opening vast lands for settlement. Labor was needed to gouge the earth for coal and iron, to work in rapidly developing mills and to build cities.

As demand for labor increased, so too did the number of immigrants. From 1860 to 1880, about 2.5 million Europeans entered this country each decade; during the 1880s the number more than doubled to 5.25 million. Another 16 million immigrants entered during the next quarter century, with 1.25 million entering in 1908.[11]

Because the numbers of immigrants were so large, it appeared as if the United States had never before experienced immigration of this sort. Not only was there a change in the size of the flow, there was also a change, once more, in the source of immigration (see table on "The Origins of U.S. Immigration, by Region, 1821-1979). The migration before the 1880s had been overwhelmingly from northern and western Europe. Even the hated Irish Catholics had come from a country where English was generally spoken and Irish immigration was now traditional. Less than three percent of the foreign-born population of the country had come from eastern or southern Europe. During the 1890s that pattern began to reverse itself, and during the first decade of the twentieth century, about 70 percent came from the new areas.

Just as the Irish and Germans had appeared to Americans to be more "foreign" than English Protestants, so too did the new immigrants appear to be more "foreign" than the old ones. In what may be an inevitable process, the old immigrants had become familiar and, therefore, respectable while the new ones were put under the closest possible scrutiny for signs of dissimilitude. And, alien characteristics are exactly what many Americans found--strange coloring, strange physiques, strange customs and strange languages.

The new immigrants were disliked and feared. They were considered culturally different and incapable of this country's version of self-government, and not because of their backgrounds but because they were thought to be biologically and inherently inferior. Influential professors of history, sociology and eugenics taught that some races could never become what came to be called "100 percent American."

A leading academic proponent of nativism, Edward Ross, wrote of Jews that they are "the polar opposite of our pioneer breed. Undersized and weak muscled, they shun bodily activity and are exceedingly sensitive to pain." He also lamented that it was impossible to make Boy Scouts out of them. Italians, he noted, "possess a distressing frequency of low foreheads, open mouths, weak chins, poor features, skewed faces, small or knobby crania and backless heads." According to Ross, Italians "lack the power to take rational care of themselves."

He concluded that the new immigrants in general were undesirable because they "are beaten men from beaten races, representing the worst failures in the struggle for existence."[12]

Even though, as a study prepared for the Select Commission by Jenna Weissman Joselit indicates, mortality statistics do not support the contention that the new immigrants were inherently diseased or biologically inferior, such sentiments began to take their toll. In 1882 the United States passed its first racist, restrictionist immigration law, the Chinese Exclusion Act. From 1860 to 1880, Chinese immigration had grown from 40,000 to over 100,000. Chinese labor had been welcomed to lay railway lines and work in mining. However, with the completion of the transcontinental railroad, which was followed by a depression in the 1870s, intense anti-Chinese feelings developed, particularly in the West, where hard-working and ambitious Chinese had made lives for themselves.

The attacks upon the Chinese often focused upon their inability, in the eyes of their opponents, to assimilate. In 1876, a California State Senate Committee described the Chinese as follows:

> They fail to comprehend our system of government; they perform no duties of citizenship. . . . They do not comprehend or appreciate our social ideas. . . . The great mass of the Chinese . . . are not amenable to our laws. . . . They do not recognize the sanctity of an oath.[13]

The supposed criminality of the Chinese was of particular concern. Although the crime statistics of the period do not bear out the accusations, the Chinese were believed to be criminals nevertheless. The state senate committee complained that "the Pacific Coast has become a Botany Bay to which the criminal classes of China are brought in large numbers and the people of this coast are compelled to endure this affliction."[14] The Chinese were especially accused of bringing gambling and prostitution to the region. In 1876, Scribner's Magazine noted that "no matter how good a Chinaman may be, ladies never leave their children with them, especially little girls."[15] The legislative committee concluded that "the Chinese are inferior to any race God ever made . . . [and] have no souls to save, and if they have, they are not worth saving."[16]

Restrictionists--looking for justifications for closing other types of immigration--also eyed European immigrants as criminally inclined. The Police Commissioner of New York, Theodore Bingham, wrote in the North American Review that

85 percent of New York criminals were of exotic origin and half of them were Jewish."[17] The author of an article in Collier's Magazine labeled Italians as "the most vicious and dangerous" criminals, and he suggested that "80 percent of the limited number of clever thieves" were Jewish.[18]

Again, the crime statistics do not bear out the accusations. In a study prepared for the Select Commission, Alan Steinberg found that when immigrants and natives are compared using controls for age and sex, immigrants do not compare unfavorably with natives. The majority of immigrants were arrested for the petty crimes--vagrancy, disorderly conduct, breach of the peace, drunkenness--associated with poverty and difference in values. Immigrants were statistically more likely to commit minor offenses than were the native born who tended to commit property crimes and crimes of personal violence. According to the statistics, there was only one real cause for concern as far as immigrant crime was concerned. The children of the foreign born were the most likely group of all to commit crimes. Their crimes more often resembled those of the native born, though, than those of immigrants. This pattern indicates, more than anything else, that acculturation occurred even in the area of crime.[19]

Despite the known evidence that immigrants were neither inherently criminal nor diseased, nativist arguments emphasizing the inferiority of immigrants were widely accepted. Restrictionists called for legislation that would decide whether the United States would be, as some put it, peopled by British, German and Scandanavian stock, or the new immigrants, "beaten men from beaten races; representing the worst failures in the struggle for existence."[20]

Earlier, nativism had been offset by confidence that the United States had room for all, by a tradition of welcoming the poor and the oppressed and by belief that life in the New World would transform all comers into new Adams and Eves in the American Eden. At the end of the century, however, these ideas were affected by four historical developments:

- The official closing of the U.S. frontier;
- Burgeoning cities and increasing industrialization;
- The persistence of immigrants from southern and eastern Europe in maintaining their traditions; and
- The Catholic or Jewish religion of most of the new immigrants.

In the light of these developments, many Americans began to doubt the country's capacity to welcome and absorb the ever-increasing waves of new immigrants.

Evidence of this new feeling about European immigration could be seen as early as 1891. There had been earlier attempts at controlling the entry of immigrants to the United States-in the Act of 1875 that excluded prostitutes and alien convicts and in the Act of 1882 that barred the entry of lunatics, idiots, convicts and those liable to become a public charge --but these were not as comprehensive as the measure debated that year. One of the principal spokesmen for the bill, Henry Cabot Lodge, of Massachusetts, urged his fellow congressmen to establish new categories of admission to the United States in order to "sift . . . the chaff from the wheat" and prevent "a decline in the quality of American citizenship."[21] The 1891 bill added new categories of exclusion that mirrored the concerns about the biological inferiority of immigrants. Those suffering from loathsome or contagious diseases and aliens convicted of crimes involving moral turpitude were barred from entry.

The bill also provided for the medical inspection of all arrivals.*

Both houses of Congress quickly passed the measure; in the Senate, noted the New York Times, "the matter did not even occupy ten minutes."[22] The measure did not go far enough for the quantitative restrictionists, though, since it did not succeed in stemming the flow of new entrants. In their efforts to change immigration policy, these restrictionists began to center their arguments upon one area of regulation--literacy.

As early as 1887, economist Edward W. Bemis gave a series of lectures in which he proposed that the United States prevent the entry of all male adults who were unable to read and write their own language. He argued that such a regulation would reduce by half or more those who were poor and undereducated. As awareness of the nature of the new immigration grew, nativists realized that a literacy test would also discriminate between desirable and undesirable nationalities, not just individuals. The proponents of the test saw it as an effective method of nationality restriction because, unlike the other "proofs" of cultural inferiority, literacy could easily and readily be measured.[23]

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*Further grounds of exclusion similar in intent were added in 1903 and 1907. For a full discussion of exclusions, see Chapter XIII.

The new immigrants were often attacked for their attachments to their native languages and what was perceived to be a failure to learn English. In an editorial, the Nation magazine proposed that a literacy test was insufficient and that English-language ability should be a requirement of entry. Recognizing that a proposal to make English a requirement of entry would effectively limit immigration to residents of the British Isles, the Nation declared in 1891 what other restrictionists believed--that "we are under no obligation to see that all races and nations enjoy an equal chance of getting here."[24]

A literacy bill was first introduced in the Congress in 1895, and under the leadership of Senator Lodge passed both houses. In the last days of his administration, President Cleveland vetoed it, suggesting that the test was hypocritical. The House overrode his veto, but the Senate took no action and the proposal died. In a new wave of xenophobia that followed the assassination of President McKinley by an anarchist mistakenly believed to be an immigrant, a new bill passed the House. Despite the support of the new president, Theodore Roosevelt, the bill's sponsors were unable to gain a favorable vote in the Senate, and it too died.

In 1906, new, comprehensive legislation was proposed that included a literacy test for admission and both a literacy and an English-language requirement for naturalization. The restrictionists, now aided by labor unions wary of competition, were opposed in their endeavors by newly organized ethnic groups as well as business leaders opposed to any elimination of new labor sources. In all but one area, the restrictionists were triumphant. Once again, though, they were unsuccessful in gaining passage of a literacy requirement for either entry or naturalization. English-language proficiency was made a basis for citizenship, though, since most congressmen agreed with Representative Bonynge that "history and reason alike demonstrate that you cannot make a homogeneous people out of those who are unable to communicate with each other in one common language."[25]

In 1907, after the restrictionist attempt to impose a literacy requirement failed, immigration to the United States reached a new high--with the arrival of 1,285,000 immigrants--and an economic depression hit the country. That same year, Congress passed legislation to establish a joint congressional presidential Commission to study the impact of immigrants on the United States. Its members appointed in 1909, the Dillingham Commission, as it is usually known, began its work convinced that the pseudoscientific racist theories of superior and inferior peoples were correct and that the more recent immigrants from southern and eastern Europe were not capable of becoming successful Americans. Although their own data contradicted these ideas, the Commission nevertheless held on to them. The Commission's recommendations were published in 1911 with 41 volumes of monographs on specific subjects, including discussions of immigrants and crime, changes in the bodily form of immigrants and the industrial impact of immigration. In the view of the Commission, their findings all pointed to the same conclusions:

- Twentieth century immigration differed markedly from earlier movements of people to the United States;

- The new immigration was dominated by the so-called inferior peoples--those who were physically, mentally and linguistically different, and, therefore, less desirable than either the native-born or early immigrant groups; and
- Because of the inferiority of these people, the United States no longer benefited from a liberal immigration admissions policy and should, therefore, impose new restrictions on entry.

The Commission endorsed the literacy test as an appropriate mechanism to accomplish its ends.[26]

The demand for large-scale restriction still did not succeed, though, because of the continuing demand for labor, the growing political power of the new immigrant groups and the commitment of the nation's leaders to preserving the tradition of free entry. In 1912, Congress once more passed a literacy test, but President Taft successfully vetoed it, extolling the "sturdy but uneducated peasantry brought to this country and raised in an atmosphere of thrift and hard work" where they have "contributed to the strength of our people and will continue to do so."[27] Another veto, this time by President Woodrow Wilson, defeated the work of the restrictionists in 1915. According to Wilson, the literacy test "seeks to all but close entirely the gates of asylum which have always been open to those who could find nowhere else the right and opportunity of constitutional agitation for what they conceived to be the natural and inalienable rights of men."[28]

After the United States entered World War I in 1917, Congress finally overrode the presidential veto and enacted legislation that made literacy a requirement for entry. The bill also codified the list of aliens to be excluded, and it virtually banned all immigration from Asia. The efforts of the restrictionists were finally successful, in large measure because World War I brought nervousness about the loyalty and assimilability of the foreign born to a fever pitch. The loyalty of immigrants became a hot political issue. Theodore Roosevelt, for example, stormed against "hyphenated Americans," as he voiced his concern that the country was becoming little more than a "poly-glot boarding house."[29] A frenzy of activity against German Americans (who only a short while before were thought, along with the English, Scots and Scandanavians to be the best qualified to enter) led to the closing of thriving German-language schools, newspapers and social clubs. The Governor of Iowa took what may have been the strongest measures; he decreed that the use of any language other than English in public places or over the telephone would be prohibited.[30]

This agitation against the foreign born culminated in two efforts: a movement to "Americanize" immigrants and the development of immigration restrictions based on national origins quotas. The Americanization movement had had its start in 1915 when two government agencies, operating independently of each other, began assessing the number and efficacy of immigrant education programs operating in the country. One of these agencies, the Bureau of Naturalization, undertook a letter-writing campaign aimed at learning the degree to which such programs existed. The following summer, the Bureau held a conference in Washington to discuss the information it collected and propose plans for speeding the acculturation of immigrants. In the meantime, though, the Bureau of Edubation convened its own conference, out of which came the National Committee of One Hundred--prominent citizens organized "for the purpose of assisting in a national campaign for the education of immigrants to fit them for American life and citizenship."[31] With the efforts of these two agencies for guidance, hundreds of communities, private organizations and businesses embarked upon their own programs of Americanization.

Interior, "unless we have one national language."[32] Lobbying efforts by the Bureau of Education led many states--twenty between 1919 and 1921--to pass legislation establishing Americanization programs to ensure that all ilmigrants would learn English, the language of America," as a California commission called it.[33]

Industry also joined the movement. It was frequently asserted that "ignorance of English is a large factor in [job] turnover" and similarly that "there is an important connection between ignorance of English and illiteracy to economic loss."[34] The National Association of Manufacturers encouraged Americanization programs among its members. Henry Ford set up classes within his plants and required attendance of his 5,000 non-English-speaking employees. The International Harvester Company produced its own lesson plans for the non-English-speaking workers in its plants. They clearly taught more than English itself. The first plan read:

> I hear the whistle. I must hurry.
> I hear the five minute whistle.
> It is time to go into the shop. . . .
> I change my clothes and get ready to work. . . .
> I work until the whistle blows to quit.
> I leave my place nice and clean.
> I put all my clothes in the locker.
> I must go home.[35]

By 1923, the Bureau of Naturalization announced it had 252,808 immigrants in 6,632 citizenship-training courses around the nation. Of these, 4,132 were conducted in public school buildings, 1,256 in homes, 371 in factories and 873 at other locations.[36]

The success of the Americanization program in enrolling immigrants was not enough to satisfy the opponents of immigration. Still convinced that racial differences precluded the full assimilation of the new immigrants, some nativists doubted the ability of Americanization classes to transform immigrants into "100 percent Americans." Some were convinced that all immigrants should be [illegible] to learn English, and if they could not, should be subject to deportation. Theodore Roosevelt proclaimed that "I would have the government provide that every immigrant be required to learn English, with instruction furnished free. If after five years he has not learned it let him be returned to the country from which he came."[37] To Roosevelt and other nativists, failure to learn English represented some sort of disloyalty or a failure of will; both were clearly reasons for expelling the alien.

As the movement to compel assimilation of those already here progressed, those fearful of the consequences of immigration also sought new restrictions on entry. Restrictionists had learned that the literacy requirement which they believed held so much promise was not succeeding as had been expected. Immigration from southern and eastern Europe continued. The literacy rates of European countries showed increasing numbers eligible for entry; Italy even established schools in areas of high emigration to teach peasants to be literate so that they could pass the new U.S. test for entry.

To quantitative restrictionists, new measures were needed. The suspension of all immigration--an idea never before of any great appeal in U.S. immigration history--began to gain support. The two groups most associated with it, organized labor and "100 percenters", had little else in common. Labor supported suspension of immigration because of the competition for jobs that occurred with the entry of aliens.

The 100 percenters feared that European people and ideas--whether "bestial hordes" from conquered Germany or the "red menace" of Bolshevism--would contaminate U.S. institutions and culture.

The extreme form of restrictionism proposed by those wishing to ban all immigration gained some support in the House of Representatives, where arguments that postwar immigration was composed largely of Jews who were "filthy, un-American, and often dangerous in their habits" were particularly effective, but failed to pass the Senate Committee on Immigration, which was dominated by easterners with large businesses and ethnic constituencies favorable to immigration.[38]

Instead, the Senate proposed its own legislation to reduce overall immigration and to change the ethnic composition of those permitted entry. The goal of the bill--similar to one originally proposed by Senator Dillingham of the earlier Immigration Commission--was to ensure that northern and western Europeans still had access to the United States while southern and eastern European immigration would be restricted. In 1921, Congress passed and President Harding signed into law the Senate-proposed legislation--a provisional measure which introduced the concept of national origins quotas. This act established a ceiling on European immigration and limited the number of immigrants of each nationality to three percent of the number of foreign-born persons of that nationality resident in the United States at the time of the 1910 census.

This first quota act was extended for two more years, but in 1924 came the passage of what was heralded as a permanent solution to U.S. immigration problems. The Johnson-Reed measure, more commonly known as the National Origins Act, --provided for an annual limit of 150,000 Europeans, a complete prohibition on Japanese immigration, the issuance and counting of visas against quotas abroad rather than on arrival, and the development of quotas based on the contribution of each nationality to the overall U.S. population rather than on the foreign-born population.* This law was designed to preserve, even more effectively than the 1921 law, the racial and ethnic status quo of the United States. The national origins concept was also designed, as John Higham wrote in his study of U.S. nativism, Strangers in the Land, to give "comfort to the democratic conscience" by counting everyone's ancestors and not just the foreign born themselves.[39]

Recognizing that it would take some time to develop the new quotas, as a stopgap measure the bill provided for the admission of immigrants according to annual quotas of two percent of each nationality's proportion of the foreign-born U.S. population in 1890 until 1927--amended to 1929--when the national origins quotas were established. The use of the 1890 census had been criticized as a discriminatory measure since it seemed to change the rules of European entry solely to lower the number of the so-called "new" immigrants. Use of the 1890 census instead of that of 1910 meant a reduction in the Italian quota from 42,000 to about 4,000, in the Polish quota from 31,000 to 6,000 and in the Greek quota from 3,000 to 100.[40] The proponents of the new legislation argued, however, that use of the 1910 Census was what was really discriminatory since it underestimated the number of visas that should go to those from northern and western Europe.

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* See Chapter VII for a fuller description of the operation of this act.

In preparing its report on the new legislation, the House Committee on Immigration relied heavily on an analysis prepared by John B. Trevor, an aide to Representative Johnson, which gave an estimated, statistical breakdown of the origins of the U.S. population. Trevor also calculated the quotas that would be derived from the use of the 1890 and 1910 census figures on the foreign born. He found that the 1890 census better approximated the national origins of the overall population. Trevor argued that about 12 percent of the U.S. population in 1890 derived from eastern and southern Europe, but on the basis of the 1910 census they were given about 44 percent of the total quota. Using the 1890 census they would have 15 percent of the immigrant numbers. The restrictionists were thus able to turn around the criticism aimed against them by arguing that previous policy favored the "new" immigrants at the expense of the older U.S. stock.

Despite the rhetoric of its supporters--and the exemption of members of the Western Hemisphere from its quotas--the Immigration Act of 1924 clearly represented a rejection of one of longest-lived democratic traditions of the United States, represented by George Washington's view that the United States should ever be "an asylum to the oppressed and the needy of the earth." It also represented a rejection of cultural pluralism as a U.S. ideal. The Commissioner of Immigration could report, one year after this legislation took effect, that virtually all immigrants now "looked" exactly like Americans.[41] Abraham Lincoln's fear that when the nativists gained control of U.S. policy they wold rewrite the Declaration of Independence to read: "All men are created equal, except Negroes, and foreigners, and Catholics" seemed to be coming true.

Immigration to the United States suffered still another blow with the Great Depression. During the 1930s, only 500,000 immigrants came to the United States, less than one-eighth of the number that had arrived in the previous decade. Most reduced in number were members of those nations jointly affected by the national origins quotas, and by economic conditions that made impossible their usual pattern of temporary migration for the purposes of work. Temporary migration was a familiar pattern before the imposition of the new legislation. In fact, the prevalence among the "new" immigrants of "birds of passage"--accused of being unstable forces in society, prone to crime and disease and displacing U.S. citizens from jobs-had been one reason for passing restrictive legislation.[42] Temporary migration can be measured through data on emigration, the number of immigrants who leave the country some time after arrival. Throughout most of the early twentieth century, according to official statistics that were collected beginning in 1908, emigration stood at a minimum of 20 percent of immigration and, more commonly, at 30 to 40 percent. In times of depression, the proportion of those who left the country as opposed to those who arrived increased still further; the temporary migrants returned home until conditions in this country improved. In

1932, at the height of the Great Depression, the emigration figure stood at 290 percent of legal immigration. While 35,576 entered the country, over 100,000 left.[43]

Those most tragically affected by the U.S. policy of restrictive immigration (and the economic problems that made U.S. citizens unwilling to alter it) were the refugees who tried to flee Europe before the outbreak of World War II. Although some efforts were made to accommodate them--in 1940 the State Department permitted consuls outside of Germany to issue visas to German refugees because the German quota sometimes remained unfilled--these measures were too few and came too late to help most of the victims of Nazi persecution. In what may be the cruelest single action in U.S. immigration history, the U.S. Congress in 1939 defeated a bill to rescue 20,000 children from Nazi Germany, despite the willingness of U.S. families to sponsor them, on the grounds that the children would exceed the German quota. Those refugees who were able to come in under existing quotas were still subject to all of the other requirements of entry, and a significant number were refused visas because of the public charge provisions in the grounds for exclusion.

Although the quota system of the 1920s stood substantially intact until 1965, U.S. immigration policy was affected by the events of World War II--in particular the shock this country received when it learned most graphically of the fate of the refugees refused entry. Even before that knowledge came, the war challenged long-held notions about U.S. traditions and needs. The United States realized that it once more needed the labor of aliens, for example. This country and Mexico then negotiated a large-scale temporary worker program--the bracero program--designed to fill the wartime employment needs of the United States.* Also, in large part because of the alliance of the United States with China, Congress repealed the ban on all Chinese immigration, making it possible for a small number of Chinese once again to enter the country as legal immigrants. Notions of the inherent inferiority of certain groups was dispelled when those same groups became allies in the fight against other groups that were proving to be much stronger enemies than expected.

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*See Chapter XII.

For a short period, the atmosphere was right for a liberalization of immigration policy. At the close of the war, especially after Americans learned of the Nazi atrocities, they seemed united in their appreciation of democracy and their commitment to renewing the U.S. role as a haven for the oppressed. An important first step was taken by President Harry S. Truman who issued a directive in December 1945 admitting 40,000 war refugees. Responding to the plight of U.S. soldiers who had married overseas, Congress passed the "War Brides Act" in 1946, which permitted 120,000 alien wives, husbands and children of members of the armed forces to immigrate to the United States.

In the years following the war, the executive branch continued to take an active role in reshaping immigration policy, even after the advent of the Cold War when public attitudes towards the issue turned more conservative. Most of these efforts, though, were in the area of refugee admissions and did not change the basic structure of U.S. immigration law. President Truman prodded the Congress to pass the Displaced Persons Act in 1948. After its expiration, Congress passed the Refugee Relief Act, under which 214,000 persons were admitted. Designed principally to expedite the admission of refugees fleeing Iron Curtain countries, the Act incorporated safeguards to prevent the immigration of undesirable aliens. Additional measures were passed in 1956 and 1957 to facilitate the entry of Hungarians displaced by the revolution in that country and "refugee-escapees" fleeing Communist or Communist-occupied or dominated countries and countries in the Middle East. In 1960, the Refugee Fair Share Law was passed to provide a temporary program for the admission of World War II refugees and displaced persons who remained in camps under the mandate of the United Nations High Commissioner for Refugees. This legislation gave the Attorney General a specific mandate to use his parole authority to admit eligible refugee-escapees. Although the statute was for a limited period of time, it was more comprehensive than other refugee admission programs and provided an ongoing mechanism to assist refugees.

Despite these strides in developing a policy that permitted refugees to escape from some of the restrictions of the national origins quota requirements, little else in the way of progress occurred in the immigration area until the 1960s. In fact the determination to preserve the quota system was so strong that the refugee measures provided that those entering under those provisions were to be charged to future quotas of their country of origin, as long as these did not exceed 50 percent of the quota of any one year. The refugee acts were seen as complements to the national origins policy; they made the 1924 law more responsive to emergencies but did not significantly alter immigration policy itself.

During the early 1950s, the climate was not ripe for any major liberalizing changes. Concern with communist expansion dominated U.S. thinking in the early 1950s, and the stand against communism often took the form of opposition to anything foreign. It was a period in which ethnic customs and values could easily be defined as "un-American."

It was in such an atmosphere that congressional hearings on a new immigration law took place. They were conducted under the leadership of Senator Patrick A. McCarran who, with his followers, believed that there were in the United States what he called "indigestible blocks" which would not assimilate into the American way of life. In 1952, the McCarran-Walter bill--passed into law as the Immigration and Nationality Act--consolidated previous immigration laws into one statute, but, in so doing, it preserved the national origins quota system.* The Act also established a system of preferences for skilled workers and the relatives of U.S. citizens and permanent resident aliens, and tightened security and screening procedures.

It established a 150,000 numerical limitation on immigration from the Eastern Hemisphere; most Western Hemisphere immigration remained unrestricted, although it established a subquota for immigrants born in the colonies or dependent areas of the Western Hemisphere. Finally, the Act repealed Japanese exclusion and established a small quota for the Asia-Pacific Triangle under which Orientals would be charged.

Congress passed the McCarran-Walter Act over the veto of President Truman who favored the liberalization of the immigration statutes and the elimination of national origins quotas. In his veto message, he strongly reaffirmed U.S. ideals.

> Such a concept [national origins quota] is utterly unworthy of our traditions and ideals. It violates the great political doctrine of the Declaration of Independence that "all men are created equal." It denies the humanitarian creed inscribed beneath the Statue of Liberty proclaiming to all nations: "Give me your tired your poor, your huddled masses, yearning to breathe free. . . ."[44]

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*See Chapter VII for a fuller discussion of the operation of this law.

President Truman on September 4, 1952 appointed a commission to study and evaluate the immigration and naturalization policies of the United States. On January 1, 1953 the Commission issued its report, Whom We Shall Welcome, a statement of support for a nondiscriminatory, liberal immigration policy. The Commission summarized its findings:

> The Commission believes that our present immigration laws--
>
> flout fundamental American traditions and ideals,
> display a lack of faith in America's future,
> damage American prestige and position among other nations,
> ignore the lessons of the American way of life.
>
> The Commission believes that laws which fail to reflect the American spirit must sooner or later disappear from the statute books.
>
> The Commission believes that our present immigration laws should be completely rewritten.[45]

It was not until 1965 that major changes--some urged as early as the Truman Commission--were actually made in the Immigration and Nationality Act. The election of John F. Kennedy, a descendent of Irish immigrants and the first Catholic president of the United States, marked a turning point in immigration history and focused attention again on immigration policy. As a senator, Kennedy had written A Nation of Immigrants, a book denouncing the national origins quota system. Now, as President, he introduced legislation to abolish the 40-year-old formula.

That a Catholic could be elected president signified the extent to which the United States had changed since the 1920s. Across the country came a lessening in anti-Catholic, anti-Asian and anti-Semitic sentiment, in part the result of a new tolerance of racial and ethnic differences stimulated by the civil rights movement. By the mid-1960s, Congress was ready for proposals to liberalize immigration policy, particularly after the assassination of President Kennedy and the Lyndon Johnson presidential landslide of 1964. The effort to eliminate the national origins quotas--begun many years earlier--culminated in the passage of the Immigration and Nationality Act Amendments of 1965.

The amendments accomplished the following:*

- Abolished the national origins formula, replacing it with a per-country limit of 20,000 on every country outside the Western Hemisphere, and an overall ceiling of 160,000 for those countries;
- Placed a ceiling of 120,000 on immigration from the Western Hemisphere with no country limits; and
- Established Eastern Hemisphere preferences for close relatives, as well as those who had occupational skills needed in the United States under a seven-category preference system.

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* See Chapter VII for a fuller discussion of the operation of this law.

In signing the new bill, President Lyndon Johnson said:

> from this day forth, those wishing to emigrate into America shall be admitted on the basis of their skills and their close relationship to those already here.
>
> The fairness of this standard is so self-evident. . . yet the fact is that for over four decades the immigration policy of the United States has been twisted and has been distorted like a harsh injustice of the national origins quota system . . . families were kept apart because a husband or a wife or a child had been born in the wrong place. Men of needed skill and talent were denied entrance because they came from southern or eastern Europe or from one of the developing continents. The system violated the basic principle of American democracy--the principle that values and rewards each man on the basis of his merit . . . it has been un-American.[46]

The new amendments, as the President suggested, heralded in a new era in U.S. immigration policy. No longer would one nationality be given a larger quota than another in the Eastern Hemisphere. Preference would be given to reuniting families and to bringing those who had certain desirable or needed abilities. These were to be the goals of immigration policy, and the goal of preserving the racial and ethnic domination of northern and western Europe would no longer be an explicit part of U.S. immigration law.

The United States was, of course, far from free of prejudice at that time, and one part of the 1965 law reflected a change in policy that was in part due to antiforeign sentiments. Prejudice against dark-skinned people, particularly in social and economic life, remained strong. In the years after World War II, as the proportion of Spanish-speaking residents increased, much of the lingering nativism in the United States was directed against those from Mexico and Central and South America.* The 1952 law-in keeping with the "Good Neighbor" policy, as it was described by Franklin Delano Roosevelt--had not placed any limitations on immigration from these regions, but by 1965 the pressure for such restrictions had mounted. Giving in to these pressures as a price to be paid for abolishing the national origins system, Congress put into the 1965 amendments a ceiling on immigration from the Western Hemisphere that was designed to close the last remaining open door of U.S. policy. This provision went into effect on July 1, 1968.

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*See Chapter IX for more information on migration from Mexico.

The legislation did not accomplish its goal regarding Western Hemispher immigraiton without substantial costs. In 1976, the House Judiciary Comittee reported on the effect of ending the Good Neighbor open door: a steadily increasing backlog of applicants from Latin America, with prospective immigrants waiting two years for a visa. The Committee, recognizing that the ceiling on Western Hemisphere migration had been part of a compromise in the passage of the 1965 amendments, noted:

> When repealing the national origins quota system, the 89th Congress did not provide an adequate mechanism for implementing the Western Hemisphere ceiling. . . . The result, completely unforeseen and unintended, has been considerable hardship for intending immigrants from this hemisphere who until 1968 enjoyed the privilege of unrestricted immigration.[47]

In 1976 a new law was passed to make regulations regarding immigration the same for both hemispheres, applying to countries of the Western Hemisphere the 20,000-per-country limit and the preference system that was in effect in the Eastern Hemisphere.* The only provision to cause any controversy in the 1976 Act was the application of the per-country ceiling provision to Mexico, which had exceeded the 20,000 limit every year since the enactment of the 1965 amendments. There was considerable support for the idea that special provisions should be permitted for contiguous countries, particularly Mexico, because of the special relationship that had developed as a result of shared borders. President Gerald Ford noted in his statement on signing the 1976 amendments into law that he would submit legislation to Congress to increase the immigration quotas for Mexicans desiring to come to the United States, and President Jimmy Carter endorsed similar legislation in 1977. No action, however, was taken to provide this special treatment for Mexico.[48]

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*See Chapter VII for a fuller discussion of the operation of this law.

The 1976 law maintained two last vestiges of differential geographic treatment--the separate annual ceilings of 170,000 for the Eastern and 120,000 for the Western Hemisphere and the special ceiling (600 visas per year) assigned to colonies and dependencies. In 1978, new legislation combined the ceilings for both hemispheres into a worldwide total of 290,000 with the same seven-category preference system and per-country limits applied to both.* Senator Edward Kennedy described the benefits accruing from the 1978 legislation:

> The establishment of a worldwide ceiling corrects an anomaly in the law, and is a logical step in consequence of the major immigration reforms Congress enacted in 1965--on which I served as floor manager at the time.
>
> In the long term, this reform makes more flexible the provisions of the preference system, and in the short run it has the likely effect of allowing the use of more nonpreference visas next year for the backlog in the Western Hemisphere and the use of more conditional entry visas for Indochina refugees--a need that is extraordinarily urgent in Southeast Asia today. All this will not involve, however, any increase in the total annual immigration authorized under the law.[50]

Concern about Indochinese conditional entries was an important consideration in the establishment of a worldwide ceiling. The 1965 amendments to the Immigration and Nationality Act had included a permanent statutory authority for the admission of refugees, called the conditional entry provision, patterned after earlier legislation, especially the Fair Share Refugee Act of 1960. The seventh preference category was designated for these admissions and was allocated six percent of the

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*The colony/dependency ceiling is still in force. See proposals, in Chapter VIII.

Eastern Hemisphere ceiling of 170,000 visas, one-half of which could be used for aliens in the United States who were adjusting their status. In 1976 the preference system was extended to the Western Hemisphere, under a separate numerical ceiling with its own proportion of seventh-preference slots. At the time of Senator Kennedy's remarks, it was apparent that Western Hemisphere seventh-preference numbers --applicable only to Cubans who were then unable to leave in sizeable numbers--were unused whereas Eastern Hemisphere demand was great. A worldwide ceiling would permit the visas to go where the refugee need was greatest without reference to hemisphere.

The 1978 amendments did not address the full range of issues raised by U.S. refugee policy, not were they intended to do so. The working definition of a refugee--originally developed during the Cold War--still included considerations of national origins, even though the rest of immigration policy had dismissed this criteria.

In the Immigration and Nationality Act of 1952, a refugee was defined as a person who:

> (i) because of persecution or fear of persecution on account of race, religion, or political opinion . . . have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made; or (B) that they are persons uprooted by catastrophic natural calamity as defined by the President who are unable to return to their usual place of abode.

This definition did not permit the entry of those fleeing noncommunist persecution unless they came from the the Middle East.

Problems also arose because of the inadequacy of the conditional-entry provisions in dealing with large-scale emergencies. Although when these provisions were enacted Congress intended that they would be the means through which most refugees would be admitted, the parole provision of the Immigration and Nationality Act was actually the major authority for the entrance of large groups of refugees. Under the parole authority, the Attorney General has the discretion to parole any alien into the United States temporarily, under such conditions as the Attorney General may prescribe, in emergencies or for reasons deemed strictly in the public interest. During the 1960s, Cuban refugees were paroled into the United States; between 1962 and the end of May 1979, over 690,000 Cubans entered this country under that authority. In 1975, two parole programs were adopted to aid the resettlement of refugees from Indochina. Other major programs permitted the parole of still more Indochinese between 1976 and 1979. In June 1979 President Carter announced that the number of Indochinese paroled into the country would be set at 14,000 per month. During the same period, the parole of about 35,000 Soviet refugees for the year was also authorized as was the entry of slightly more than a thousand Chilean and Lebanese parolees.

The parole authority had been used in these cases because the conditional entry provisions were too limited to deal with emergencies. Yet reliance on the parole authority seemed to be an inappropriate response to what were recurring situations. Attorney General Griffin B. Bell described one of the major problems with the use of the parole authority in refugee crises: "This . . . has the practical effect of giving the Attorney General more power than the Congress in determining limits on the entry of refugees into the country."[50] He also noted that the use of parole authority prevented the country from giving clear signals to other nations about the extent of U.S. willingness and ability to respond to world refugee needs. Because of the absence of an ongoing policy for refugee admissions, the United States was unable to plan effectively, and, as Bell concluded, "individual refugees [were] hostage to a system that necessitates that their plight build to tragic proportions so as to establish the imperative to act."[51]

The concerns about refugees led to legislative action in 1979 and 1980. The Refugee Act of 1980 was designed to correct the deficiencies of U.S. refugee policy by providing ongoing mechanisms for the admission and aid of refugees. The legislation broadened the definition of refugee by removing the geographic and ideological limitations of the earlier conditional-entry provisions. It also established an allocation of 50,000 for normal refugee admissions, through 1982, and provided procedures through which the President in consultation with Congress could increase this number annually in response to unforeseen circumstances. It further provided for a special conditional entry status with adjustment to permanent resident alien status after one year in the United States.

In addition to making changes in admissions policy, the Refugee Act of 1980 also established the ongoing responsibility of the federal government for the resettlement of refugees accepted under the Act. The legislation included provision for up to 100 percent reimbursement to states for cash and medical assistance provided to refugees during their first 36 months in this country and for grants to voluntary agencies for some of their costs incurred in resettlement.

The Refugee Act of 1980 is an affirmation of the U.S. commitment to accept a portion of the world's refugee population. It is also a step in what is expected to be a major revision in U.S. immigration policy as a whole. The Select Commission was established in 1978 as part of that endeavor, for the purpose of examining and evaluating U.S. immigration policy and offering recommendations as to needed change. The Commission issued its report on March 1, 1981.

Footnotes

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3. Jones, p. 91.

4. U.S. Department of Commerce, Bureau of the Census, Historical Statistics of the United States: Colonial Times to 1970, Bicentennial Edition, (Washington, D.C.: Government Printing Office, 1975), I:97-98.

5. U.S. Department of Commerce, Bureau of the Census, "Immigrants by Country, 1820-1970, Series C 89-119," Historical Statistics, 1: 105-9.

6. Herman Melville, Redburn, pp. 216-17.

7. Samuel F.B. Morse, "Imminent Dangers to the Free Institutions of the United States through Foreign Immigration and the Present State of the Naturalization Laws," New York Journal of Commerce (New York: E.B. Clayton, 1835).

8. Allen Steinberg, "The History of Immigration and Crime," paper prepared for Select Commission on Immigration and Refugee Policy. (New York: Historical Consultants Inc., 1980).

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11. Historical Statistics, "Immigrants by Country, 1820-1970," I:105-109.

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21. Joselit, p. 1.

22. Ibid., p. 1.

23. Higham, p. 101.

24. "The Language Test for Immigrants," Nation 54 (April 16, 1891), 312.

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42. Thomas Kessner, "History of Repatriation," paper prepared for Select Commission on Immigration and Refigee Policy (New York: Historical Consultants, 1980), Section IV passim.

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CHAPTER VI: DOING WELL BY DOING GOOD-- THE IMPACT OF LEGAL IMMIGRATION ON THE UNITED STATES*

Legal immigration to the United States has always created a certain amount of national ambivalence. In recent years, the comments about those who come to the United States--whether from public figures or ordinary citizens--have been similar to those the nation has heard before.

A speech by the late Vice President Hubert H. Humphrey at an American Immigration and Citizenship Conference in 1965 typifies the optimistic perception of immigrants as a benefit to U.S. society:

> The most energetic, hard-working people of each generation of Americans have been those newest to our country. So when we want to put a little more zest into America, add a little more flavor to this great Republic, give it a little more drive, just let there be a little infusion of new blood, the immigrant. He is restless, he seeks to prove himself.[1]

Some correspondents to the Select Commission have been less certain of the consequences of today's immigration:

> The brown flood of aliens inundating our southwestern states and Florida from Mexico, Central and South America and Cuba is of great historical significance. It has already changed the character of the southwest and of our whole land, not just for twenty years but forever. The west was built largely by north Europeans. They had fierce loyalty to their new country. They asked no special privileges, they wanted to give. Many have become our

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*Susan S. Forbes, author.

> most distinguished citizens. The aliens coming in now are different. They are emotional, vocal and demand every support and service from our government
>
> Myriam Toles
> Douglas, Arizona
>
> All of these people take away jobs from Americans, and they form demanding special interest groups who disrupt and exploit the natural order already established.
>
> Louise Ament
> Atlanta, Texas[2]

To a large degree the differences in opinion are the result of emotional biases that often touch the issue of immigration. But, they are also the result of problems in gaining reliable and easily usable information with which to assess the characteristics and impact of immigrants.

Some questions about immigration can be answered only partially at the present time. At a recent conference on immigration statistics held by The National Academy of Sciences, participants indicated the need for additional and better data on migration to and from the United States. While accurate information exists on the entry of legal immigrants,* too little is known of a precise nature about rates of emigration. Since emigration must be taken into account in any study of the impact of net migration (gross immigration minus emigration) on population size and characteristics, the absence of such data can be critical. Warren and Peck, in their study, "Emigration from the United States: 1760-1970," argued that their findings--more than one million foreign-born persons emigrated from 1960 to 1970--"provided solid evidence that emigration from the United States is an important component of population change which should be taken into account in computing population estimates and projections." They also noted, though, that large gaps still exist in our knowledge about this phenomenon.[3]

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*See Chapter IX for discussion about the data problems in examining undocumented/illegal migration.

Also, of great interest to researchers, policymakers and the public are questions about the adaptation of immigrants to U.S. values and patterns of behavior. Analyses of this issue have generally been hampered by a lack of longitudinal data upon which to base interpretations. There has been no attempt to collect information--systematically and over an extended period of time--on the experiences of a large sample of immigrants.* Most studies of immigrants have been based on data collected by the Immigration and Naturalization Service and the Bureau of the Census.

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*Some researchers--notably economist Barry Chiswick--argue that the concern about lack of longitudinal data is not warranted. Chiswick has compared data from the National Longitudinal Survey with nonlongitudinal data and has found similar patterns.

The Immigration and Naturalization Service collects data about the characteristics of immigrants on entry, including information about place of birth, country of last permanent residence, nationality, age, sex, marital status, place of intended residence, occupation and class of admission. It also provides information about naturalization and, through the alien registration system, place of residence in the United States.

Census Bureau data includes information about ethnicity, economic progress, language, schooling, health and a range of other issues that is invaluable to researchers. By comparing the characteristics of those who came to this country many years ago with those who came more recently, researchers have tried to reconstruct the experiences of immigrants over time. This type of data can be useful, but is problematic to use as an indication of the extent to which immigrants change because of their experiences in the United States. Census Bureau data is cross-sectional, with the same questions asked of groups of immigrants who entered the country in different years, and as such it must be used with great care. Changes in both U.S. immigration policy and the sources of immigration have meant changes in the characteristics of immigrants on entry. Whether differences in the characteristics of pools of immigrants are due to their experiences in the United States or to other factors cannot be ascertained from this data.

Despite the problems inherent in the use of cross-sectional data, it remains the best source of information about the characteristics of immigrants in the absence of extensive longitudinal data. The Select Commission has tried to expand the knowledge about immigrants and the effects of immigration by commissioning a number of new studies by respected researchers who have used cross-sectional data to answer questions about the income, use of social services, fertility and family patterns, schooling and health status and civic participation of immigrants. The Commission staff has also surveyed the full range of other studies about immigration and has conducted research of its own. The sections that follow outline the staff's findings regarding the characteristics and impact of immigrants.

Factors Influencing the Characteristics of Entering Immigrants

The 1965 Amendments to the Immigration and Nationality Act by eliminating national origins quotas, changing categories of admission, implementing a new labor certification system and favoring family reunification preferences caused substantial change in the characteristics of immigrants upon entry. Further amendments to the law were passed in 1976--extension of the preference system and per-country limit provisions to the Western Hemisphere; in 1978--adoption of a worldwide ceiling of 290,000; and in 1980--provisions for the acceptance of refugees and reduction of the overall ceiling to 270,000. Unfortunately, it is impossible to determine if these new changes have had any significant impact on the initial characteristics of new entrants. Too little time has elapsed to generate data on the 1978 and 1980 changes. In evaluating the 1976 changes, other problems arise. First, before sufficient data on these changes could be accumulated, the 1978 and 1980 amendments became law. Second, because of the Silva decision (see Chapter VII), immigration from a number of countries in the Western Hemisphere has exceeded what would have been permitted normally during the same period of time. Finally, the years since 1976 have seen several major refugee crises that have increased the number of immigrants from certain regions, outside of the prference provisions of the Immigration and Nationality Act.

Because of the difficulties in evaluating the impact of the most recent changes in immigration policy, this report will not try to interpret the significance of these changes, as far as the characteristics of immigrants are concerned. Also, since the passage of the 1965 changes is generally seen as a turning point in U.S. immigration policy and is known to have effected characteristics, this report will treat all of those who came here after 1965 as present-day immigrants. This section will offer contrasts between these immigrants and earlier arrivals, but it will not attempt in any systematic way to differentiate between those who arrived before and after the 1976 changes in the law.

Sources of Immigration

The 1965 Amendments significantly changed the sources of immigration to the United States, as did changes in the political and economic climates of sending countries.*

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*See chapter VII.

By the 1970s a pattern emerged as certain countries came to dominate immigration to the United States--among them Mexico, the Philippines, Cuba, Korea, China and Taiwan, India, Vietnam and the Dominican Republic. That such domination took place is not surprising; it is a pattern that has been prevalent throughout U.S. immigration history. In fact, in previous periods, the five countries with the highest levels of immigration to the United States have accounted for a much higher proportion of total immigration (at times as high as 93 percent) than they have in recent years (see table on "The Five Countries with Highest Levels of Immigration").

The 1965 Amendments changes the geographic origins of immigration to the United States, but events apart from U.S. immigration policy helped determine the pattern of migration that then developed. The decline immigration from western Europe is generally attributed to the rapid economic growth that occurred in that region in the years after World War II,* as well as to the more stringent labor certification requirement in use since 1965. With prosperity, an increase in local economic opportunity, the building of the welfare state in many of these countries and a great deal of political freedom, these Europeans find little cause to seek new homes.

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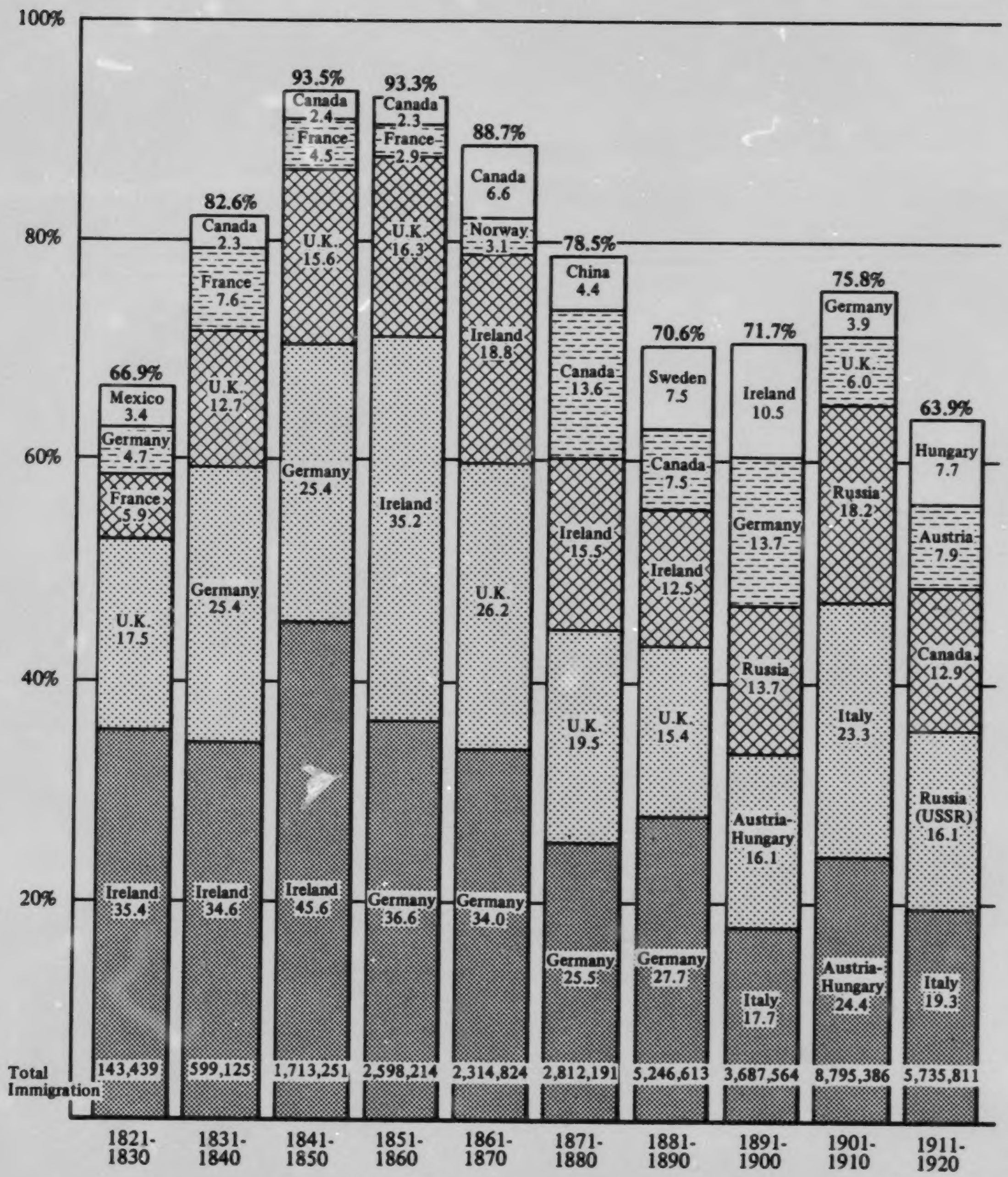
*It is also argued that even if demand were significant in Europe, the U.S. policies emphasizing family reunification made it difficult to find an immigration channel.

On the other hand, residents of many developing countries in Asia and Latin America find immigration to the United States a vehicle for improving their own economic, social and/or political situations. Feeling themselves being pushed from countries that are overcrowded, that have highly uneven distributions of wealth and, in some cases, dictatorial governments, they are being pulled by U.S. opportunities and freedom. And, once a pattern of migration is established, U.S. policy by emphasizing the reunification of families contributes to its continuation.

Demographic Characteristics

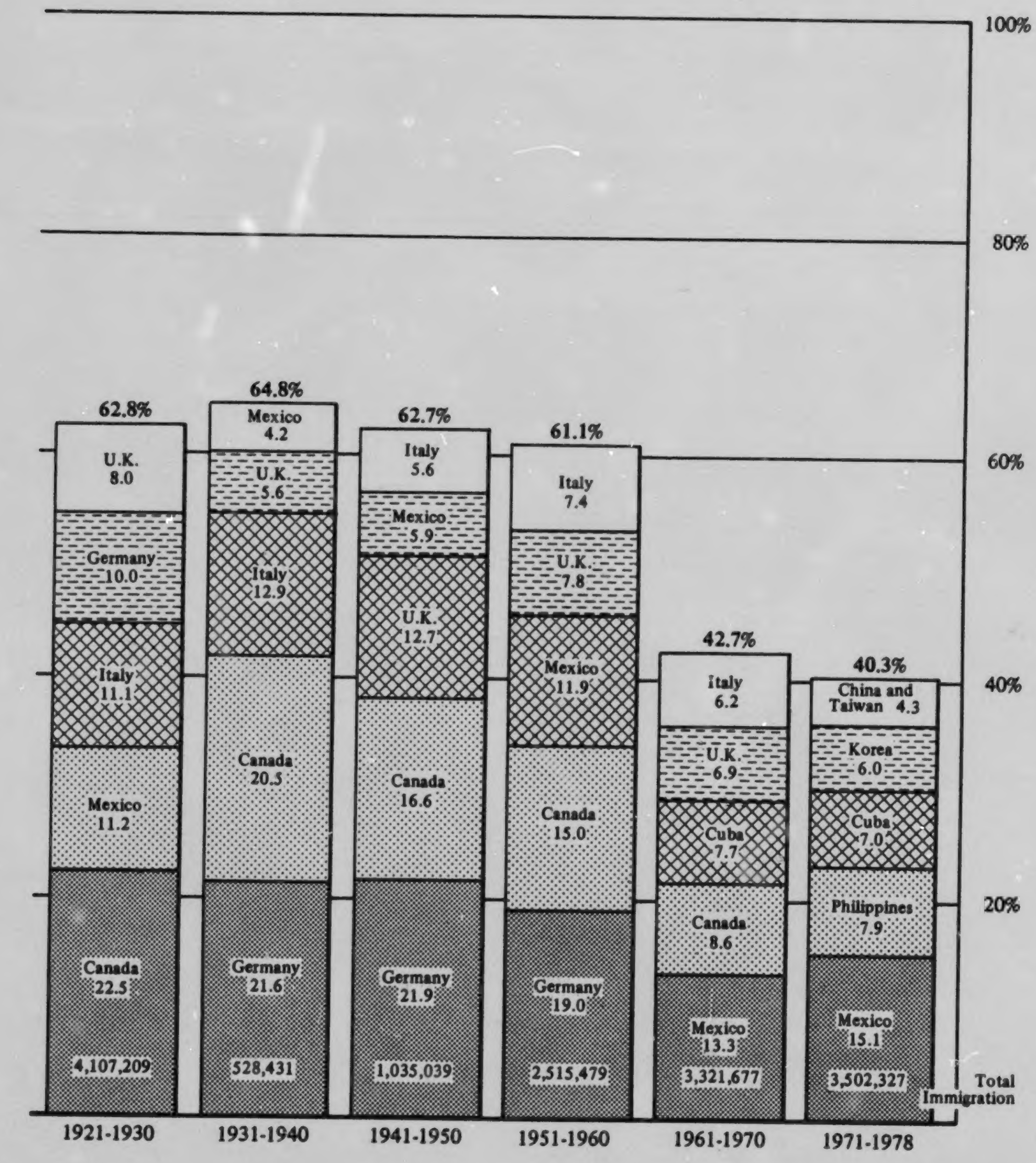
Although the geographic origins of immigrants have changed substantially in recent years, their demographic characteristics have changed very little from the period which immediately preceded the passage of the 1965 amendments. During the ten-year period--1956 to 1965--45 percent of entering immigrants were male, compared with 47 percent in the period from 1975

THE FIVE COUNTRIES WITH HIGHEST LEVELS OF IMMIGRATION TO THE UNITED STATES BY DECADE, 1821-1978



SOURCE: Based on figures in Tables 13 and 14, Immigration and Naturalization Service, Annual Report, 1978.

NOTE: Reporting of immigration via U.S. land borders with Mexico and Canada was not fully established until 1908.


100%
80%
60%
40%
20%
62.8%
U.K. 8.0
Germany 10.0
Italy 11.1
Mexico 11.2
Canada 22.5
4,107,209
1921-1930
64.8%
Mexico 4.2
U.K. 5.6
Italy 12.9
Canada 20.5
Germany 21.6
528,431
1931-1940
62.7%
Italy 5.6
Mexico 5.9
U.K. 12.7
Canada 16.6
Germany 21.9
1,035,039
1941-1950
61.1%
Italy 7.4
U.K. 7.8
Mexico 11.9
Canada 15.0
Germany 19.0
2,515,479
1951-1960
42.7%
Italy 6.2
U.K. 6.9
Cuba 7.7
Canada 8.6
Mexico 13.3
3,321,677
1961-1970
40.3%
China and Taiwan 4.3
Korea 6.0
Cuba 7.0
Philippines 7.9
Mexico 15.1
3,502,327
1971-1978
Total Immigration

to 1979.* The male/female distribution of immigrants during the past 25 years, as measured by these statistics, stands in sharp contrast to the patterns of immigration at the turn of the century. During the first decade of this century, men accounted for 70 percent of the total immigration to this country. It was not until the Great Depression that the proportion of men to women began to shift.

In recent years, the median age increased slightly; in the 1956-65 period, it was 24.6 and during the 1975-79 period, it was 26.2 years. The median age for males went from 25.3 to 26.1 years, and the median age for females went from 24.1 to 26.3 years. Between 1975 and 1979, 49.4 percent of male immigrants and 54.7 percent of female immigrants were married. Of all women immigrants, 60.7 percent were of child-bearing age (15 through 44).

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*It should be noted that 1975-79 was a period with a high level of refugee admissions. Where characteristics or experiences are known to be affected by refugee admissions, these are noted. Otherwise, immigrants and refugees are grouped together.

According to the Interagency Task Force Staff Report's analysis of data from 1969 to 1976, numerically limited immigration from the Western Hemisphere was more heavily dominated by women than was true of Eastern Hemisphere movement. Those from the Eastern Hemisphere were older than those from the Western Hemisphere; within the Eastern Hemisphere ceiling those migrating under family preferences tended to be younger than those coming in under occupational ones.

Occupational Characteristics of Entering Immigrants

The Immigration and Naturalization Service keeps data on the occupations of entering immigrants. Between 1975 and 1979, an average of 60 percent of those coming into the country reported that they were either housewives or children, or they reported no occupation. Of those who did report that they had occupations, the largest number reported that they were professional, technical or kindred workers. The next largest numbers were operatives, craftsmen and kindred workers, and clerical and kindred workers. Service workers came next in order of magnitude, followed by managers and administrators. Then, with a much smaller number, came salesworkers, farm laborers and private household workers.

Occupational Distribution of Entering Immigrants Reporting Occupation

	1975-1979 (percent)
Professional and managerial	31.6
Clerical and sales workers	13.2
Crafts workers	11.7
Other Blue collar	24.9
Service	13.7
Farm workers	4.8

SOURCE: INS Annual Reports.

The 1965 Amendments, in particular their more stringent labor certification, contributed to a substantial increase in the proportion of immigrants who declare upon entry that they are professionals, highlyskilled technical workers and managers. Between 1956 and 1965, an average of 10.4 percent of those who specified employment status reported professional, technical or managerial occupations. From 1975 to 1979, an average of 31.6 percent reported these occupations. Recent immigrants have been more likely at time of entry to report a professional, technical or managerial occupation that is the overall U.S.

population. During the same period of time, 25.8 percent of the general population that participated in the labor force reported these occupations.

Immigrants from Asia and Europe are more likely to be in the higher occupational categories than are those from the Western Hemisphere. In 1979, for example, 45.6 percent of Asians and 39.6 percent of Europeans were in these occupations compared with 19.5 percent of North Americans and 26.2 percent of South Americans.

Geographic Destinations of Immigrants

Although immigrants settle in all fifty states and U.S. territories, they, like the overall U.S. population, tend to cluster in a few states and metropolitan areas. The Immigration and Naturalization Service (INS) keeps data on the state of intended residence of immigrants coming to the United States. Between 1975 and 1979, 68.6 percent of entering immigrants intended to settle in six states--California, New York, Florida, New Jersey, Illinois and Texas. Over 40 percent intended to settle in the two most populous states, California and New York. This concentration of immigrants, as measured by intention, does not differ in either its extent or distribution from the pattern that existed before the 1965 changes in immigration policy, although during this period, California replaced New York as the state to which most immigrants were destined. Between 1956 and 1965, 66.9 percent of entering immigrants intended to settle in the same six states, and 45 percent intended to settle in New York and California.

INS also keeps data on the states of residence given by aliens in the alien address program. These data also point to a clustering of aliens in a few states. In 1978, 60 percent of those who reported their addresses were living in the six states listed above, and 37 percent were living in California and New York.

Both of these measures--intended residence and alien address--indicate that immigrants tend to be more concentrated than the overall U.S. population. The six states which account for over 60 percent--by either measure--of the immigrant population include only 36.8 percent of the general population; the six most populous states--California, New York, Texas, Pennsylvania, Illinois and Ohio--have 39.8 percent of the total population.[4]

The vast majority of immigrants settle in urban areas (populations of 2,500 to 99,999) or cities (populations of 100,000 or more). In fact, less than one percent of all immigrants entering in 1979 stated that they intended to settle in rural areas with populations of less than 2,500.

The destination and extent of concentration of immigrants within the United States differs by country of origin. In 1979, for example, 60.5 percent of all Cubans planned to settle in Florida; 46.4 percent of all Filipinos in California; 74.4 percent of all Mexicans in California and Texas; and 70.4 percent of all Dominicans in New York.

Economic Adaptation of Immigrants

Few issues regarding immigration hold as much interest or as much potential impact as the economic adaptation of immigrants. Measured by participation in the U.S. labor force, by earnings and by occupational mobility, the economic experiences of immigrants will affect not only their own lives but also the lives of other U.S. residents.

Labor Force Participation

The labor force participation of immigrants is initially lower than that of the overall U.S. population. The 1979 Current Population Survey (CPS) conducted by the Bureau of the Census shows the following labor-force participation rates for immigrants and natives, 16 years of age and older.*

	U.S. Born	Foreign Born
All	64.8	56.5
Male	77.9	70.2
Female	53.0	44.8

These figures indicate that, for each group, the labor-force participation of the foreign born is lower than that of the native born.

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*According to economist Barry Chiswick, differences in the labor-force participation rates of the native and foreign born would be smaller among the 16 through 64 year-old population than among the total population over the age of 16.

The foreign born rates vary according to year of entry and length of stay in the United States. Overall, those who arrived between 1975 and 1979 show a rate of 61.6 percent, but those who immigrated from 1970 through 1974 and from 1965 through 1969 show rates of 72.8 percent and 72.7 percent, respectively. Males who immigrated between 1975 and 1979 show a rate of 75.5 percent; those who came from 1970 through 1974 and from 1965 through 1969 show rates of 86.5 and 87.5 percent, respectively. Females who came during the most recent period show a rate of 47.1 percent, while those who came from 1970 through 1974 and from 1965 through 1969 show rates of 59.8 and 60.0 percent, respectively.

Both male and female immigrants, in general, experience an initial period of underparticipation in the labor force, but those who came to this country five or more years ago have equaled and then exceeded the overall native-born rates. In fact, the increase in labor force participation for women may be greater than for men. According to a study by David S. North and William G. Weissert, 89.1 percent of a 1960 group of entering male immigrants reported that they had occupations--and were therefore presumably in the labor force--while 41.8 percent of entering female immigrants reported an occupation. Their survey of alien address cards revealed that 95.9 percent of the men (an increase of 6.8 percent) and 62.5 percent of the women (an increase of 20.7 percent) reported an occupation two years later.[5]

The low labor-force participation rates of the foreign born who entered from 1975 through 1979 may be lower than would otherwise be expected because of the special work experiences of the Indochinese refugees brought here for resettlement during that period. The Current Population Survey does not differentiate between refugees and immigrants within its foreign-born data, but the Department of Health and Human Services has been collecting data on the experiences of these refugees. Labor-force participation rates for Indochinese refugees sampled in a 1979 Department of Health and Human Services (HHS) survey are as follows:

Year of Entry	Labor Force Participation	
	Male	Female
1977	58.4%	29.6%
1976	65.1%	34.4%
1975	69.1%	42.9%
Average	64.2%	35.6%

Although these figures demonstrate that the Indochinese are entering the labor force in increasing numbers each additional year they are in the United States, the average for those entering during this period is significantly less than that of the foreign born sampled in the CPS. Data collected by the Immigration and Naturalization Service in January 1979, that also include those who came here in 1978, point to similar conclusions. Approximately 54 percent of the refugees sampled in that survey had found jobs. Among men, 62.6 percent were employed and among women, 42.6 percent had found jobs. The INS data also reveal that Vietnamese and Cambodian refugees have higher rates of labor-force participation than do Laotians.* Most of those who were not in the labor force were participating in the educational and training programs available to them. A survey conducted for the Department of Health and Human Services showed that 59.8 percent of those interviewed gave "attending school" as one of the principal reasons for not seeking employment; "keeping home" (26.1 percent), "poor English" (21.2 percent) and "poor health" (17.6 percent) were other frequently cited reasons.[6]

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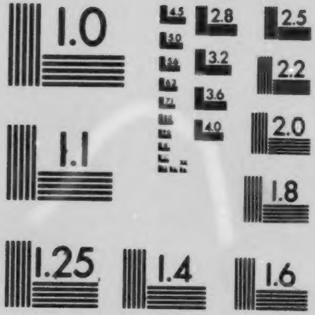
*This difference can be explained by differences in characteristics on entry. Laotians tend to come to this country having had less education and lesser job skills than the other Indochinese.


1.0
4.5
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1.4
1.6

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

Among the foreign born in general, there are patterns of labor-force participation by country of origin. Those from Africa (74.6 percent), India (72.9 percent), the Philippines (71.7 percent) and South and Central America and the Caribbean (70.5 percent) have the highest overall labor force participation rates. Those from the Eastern Bloc and Russia (41.7 percent), western Europe (47.2 percent) and Indochina (49.0 percent) have the lowest rates. The low Indochinese levels have already been explained. The European statistics can be explained by the high proportions of elderly persons within these samples; 46.8 and 57.2 percent of the western and eastern Europeans in these samples came here before 1950--one measure of age since the median age of immigrants on entry is found in the early twenties--while only 2 percent of those from India immigrated before that year.

Despite the differences in initial foreign/native born labor-force participation rates, the unemployment rates (unemployed as a percentage of the labor force) are similar: 5.9 percent of the foreign born and 5.7 percent of the native born surveyed in the CPS are unemployed. For females, the foreign-born rate is higher (7.5 percent versus 6.5 percent), but for males, it is lower (4.7 percent versus 5.0 percent). Among Indochinese refugees in the labor force, unemployment is even lower. The HHS data show male and female unemployment rates of 3.6 and 3.5 percent, respectively, when U.S. figures for men and women are 4.9 percent and 7.0 percent, respectively. As Robert and Jennifer Bach concluded in their study, "An Employment Profile of Southeast Asian Refugees in the United States," "once a refugee has entered the labor force, he or she is more likely to have found a job than the U.S. workforce. In addition, the the importance of female employment among refugees is . . . highlighted: whereas females in the U.S. labor force are almost twice as likely as males to be unemployed, female and male refugees share similar high rates of employment."[7]

Occupational Mobility

As we have seen, immigrants on entry are likely to be professionals, skilled craftspersons or have white collar occupations. Occupational homogenization takes place, however, as the occupational distribution of immigrants comes to approximate that of the native-born population. The pattern generally occurs because immigrants take jobs of lesser status when they come to this country. North and Weissert examined occupational mobility of immigrants who entered in 1970, and reported their occupations two years later. They concluded that the "data --with the single major exception of the figures on household workers--suggest that, to the extent that the net occupation group change in the first two years after arrival has a direction, it is downward."[8]

With time, immigrants regain much of their occupational status. Barry Chiswick has described the pattern of immigrant occupational mobility as a U-shaped one: coming from high status positions, they experience an initial period of loss followed by a period of upward movement. Chiswick, who asked immigrants their current and previous occupations at the time of the 1970 Census, concluded that:

> For immigrants in the United States less than five year, . . . there is a tendency toward downward occupational mobility when the "last" (1965) occupation in their country of origin is compared with their "early" (1970) occupation in the United States . . . . Among immigrants who had been in the United States at least five years in 1970, occupational mobility tended to be upward. The net upward mobility in the five-year period [between previous and current occupation] was greater for those here six to ten years than for those here eleven to twenty years.[9]

The 1979 Current Population Survey data on occupation show a similar pattern. Among those who entered from 1975 through 1979, 18.1 percent were employed in professional and managerial positions as compared, in INS entry data, to about

30 percent who reported such occupations in their previous country of residence. Of those who entered from 1970 through 1974, 20.3 percent reported such occupations; 24.0 and 30.4 percent of those who came from 1965 through 1969 and from 1960 through 1964, respectively, were so employed. A decrease in the proportion of service workers indicated movement out of that occupation into those of higher status. Of those who arrived from 1975 through 1979, 21.3 percent reported service work while 13 percent of those who came from 1960 through 1964 were so employed.

The proportion of those in professional and white collar occupations, as reported in the 1979 CPS, differs by region of origin. Canadians, for example, were at odds with the overall pattern. Fifty percent of those who came from 1970 through 1974 and from 1975 through 1979 were employed as professionals and in managerial positions; about 40 percent of those who arrived in earlier years were so employed. Cubans showed an even greater difference in occupation, depending on year of entry, than the overall foreign-born population. Only 3.3 percent of those arriving from 1975 through 1979 held professional and managerial positions, but 22.7 percent of those coming from 1970 through 1974 reported these occupations, as did 10.2 and 39.2 percent of those who arrived from 1965 through 1969 and from 1960 through 1964, respectively. Looking at service workers, the reverse pattern shows itself: among those who entered from 1975 through 1979, 40 percent worked in service occupations, but among those who entered from 1970 through 1974, only 1.6 percent did so. Those who entered from 1965 through 1970 and from 1960 through 1964 showed proportions in service work of 11.7 and 6.3 percent, respectively.

Occupational Distribution of the Foreign Born
1979 Current Population Survey

(percent)

Year of Entry	Professional & managerial	Clerical & sales workers	Crafts workers	Other blue-collar	Service	Farm workers
1975-79	18.1	11.2	6.6	35.4	21.3	7.2
1970-74	20.3	15.6	11.6	31.0	17.8	3.7
1965-69	24.0	24.0	12.9	24.7	18.3	3.1
1960-64	30.4	20.9	12.0	21.4	13.0	2.3
1950-59	29.0	19.2	13.8	23.3	13.0	1.8
Pre-1950	27.1	25.4	13.5	16.6	15.4	2.0

SOURCE: Current Population Survey, November 1979.

The initial downward mobility, Barry Chiswick explains, occurs because skills are not entirely transferable from country to country, and, therefore, immigrants are not always able to compete at first for jobs within their original occupation. With time, though, the foreign born are able to gain knowledge of the United States and acquire specific job skills. Then, upward mobility can begin. In many cases, immigrants actually do better than native-born residents. According to Chiswick, "economic theory suggests . . . that migration in response to economic incentives is generally more profitable for the more able and more highly motivated. This self-selection in migration suggests that for the same schooling, age and other demographic characteristics, immigrants to the United States would, on average, have more innate ability and motivation relevant to the labor market than the native born."[10]

The extent to which immigrants match this U-shaped pattern is determined by country of origin and the extent to which that country shares U.S. characteristics, and by the motivation of the immigrant in coming to the United States. In Chiswick's study, the downward mobility is least for immigrants coming from English-speaking, developed countries and greatest for those coming from Mexico and Cuba. The extent of subsequent upward mobility is most intense for Cubans, less intense for those from other non-English speaking countries and weakest for those from the English-speaking countries. Chiswick also argues that the U-shaped curve is less intense for conventional economic migrants than it is for refugees. Those coming for purely economic reasons tend to have more transferable skills and have been able to plan more effectively for their migration than have refugees. They, therefore, do not experience as much initial downward mobility.

Indochinese refugees have demonstrated a U-shaped pattern in the first few years of their experience in this country. A shift from professional to blue collar jobs took place at first. Evidence suggests that the pattern is now beginning to reverse itself for those who came here before 1978. Bach and Bach, using 1979 data that includes arrivals who came as late as 1978, found that 32.2 percent of the refugees claimed white collar employment in January 1979, 45.5 percent claimed blue collar employment and 22.1 percent claimed service employment. He also found that the largest proportion of refugees (38.4 percent) were employed in manufacturing industries. Department of Health and Human Services data that sampled those who arrived before 1978 show a differrent occupational distribution in April 1979: 51.8 percent of this sample held white collar occupations, and 48.2 percent were blue collar workers. These figures are almost identical to the general distribution in the United States. As Bach and Bach point out, it must be remembered that, since 1978, many refugees who are believed to have come from lower status occupations in Indochina have entered the country. Whether the pattern of occupational mobility will remain the same is unclear.[11]

Earnings

According to most studies, immigrants initially have lower earnings than the native born, but with time their earnings come to equal and then surpass the latter group. Studies differ, though, as to the amount of time it takes for immigrant earnings to match that of the native born; differences depend upon the data used and whether individual or family income is measured. Barry Chiswick, in his analysis of the economic progress of immigrants, used 1970 Census Bureau data, controlled for total labor market experience and demographic variables, and examined individual rather than family earnings. He found:

> Other things being equal, the earnings of economic migrants equal those of the native born (or those with native-born

> parents) of the same race-ethnic groups at 11 to 15 years in the U.S., after which the immigrants have higher earnings. . . . Among Mexican-Americans the earnings cross-over occurs at about 15 years, among Filipinos at about 13 years and among blacks it occurs at 11 years for the country as a whole and 13 years if the data are limited to urban New York State, the home of two-thirds of foreign-born blacks. Among the Japanese, the earnings cross-over is also in the 11 to 15 year interval if the comparison is with native-born Japanese men with native-born parents. The earnings cross-over occurs later, or does not occur at all, for refugees, that is, for the Cuban and Chinese immigrants under study.[12]

Chiswick also found that the native-born children of immigrants tend to earn 5 to 10 percent more than the children of native-born children.

Julian Simon, in a study prepared for the Select Commission, used data from the 1976 Survey of Income and Education (SIE). Using family rather than individual data, Simon compares families headed by an immigrant male with all native-born families--without controlling for demographic or other variables--in order to assess "the unconditional impact of that cohort on the natives' standard of living." Simon states that "somewhere between 2-6 years after entry, the average immigrant family comes to earn about as much as the average native family, and after that earns more."*[13]

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*Chiswick interprets Simon's data to indicate a cross-over at 6 to 10 years.

Marta Tienda and Lisa J. Niedert, using 1976 SIE data but not controlling for year of entry, found that on the whole foreignborn Hispanics received less pay and have less economic upward mobility than native-born Hispanics. They attribute the differential in pay to the greater likelihood of immigrant Hispanics working in peripheral, labor-intensive jobs. [14] Theirs and other studies of the economic mobility of Hispanics indicate that Mexican immigrants tend to show less economic progress--measured by earnings--than other Hispanics and non-Hispanic immigrants.

A number of variables affect the earning capacities of immigrants. David North found, in a study that examined a group of immigrants seven years after entry, that those who migrated for economic reasons earned more than those who were motivated by familial reasons. Chiswick found that economic migrants, whatever the motivation, more quickly matched the earnings of natives than did those who migrated as refugees or for family reasons. "Women," he argues, "who migrate with their husbands rather than on their own, and especially Asian 'war brides,' tend to have lower earnings than other female immigrants."[15]

Economic success is also related to education, fluency in English and overseas professional experience, if any. In other words, those who have skills that can be more easily transferred to the U.S. labor market will more likely succeed than those who have an absence of such skills and experience. English-language ability is a particularly important consideration. Tienda and Niedert, in a study of foreign and native-born Hispanics, explain the importance of a knowledge of English: "language usage patterns are not only a concrete manifestation of cultural distinctiveness, but also a basic labor market skill."[16] The 1979 CPS data reveal a high correlation between English-language ability and the likelihood of holding a white collar position. Of those who are bilingual and believe that they speak English well, 50 percent are in white collar jobs. Of those who are bilingual but believe that their command of English is not very good, 12.4 percent hold such jobs. And, among those who do not speak English at all, only 4.2 percent hold white collar occupations.

Language is also important because of its relationship to educational achievement. In a study of language usage and status attainment among Hispanics, Steve B. Garcia found that knowledge of English strongly affected the level of educational achievement, and education then had a strong influence on occupational mobility and earnings.[17] George J. Borgas, in a study of the earnings of Hispanic immigrants, concluded that Cubans, on average, show a relatively fast rate of upward mobility because of higher human capital investment in education.[18] Chiswick demonstrates that such investment is a characteristic of refugee populations in general.

Data about the recently arrived Indochinese refugees indicate that they are beginning to increase their earnings and that their capacity to do so is connected to language acquisition. According to data collected by HHS in 1979, 60.8 percent of those who came in 1977 were earning more than $800 per month, while 77.6 percent of those who came in 1975 were earning more than this amount. On the other end of the earnings spectrum, 4.6 percent of the 1977 arrivals and 2.7 percent of the 1975 group earn less than $200 per month. Language ability is one of the best indicators of earnings potential, according to HHS data. Only 26.4 percent of those reporting no English-language proficiency earned more than $200 per week, but 48.9 percent of those who stated that they spoke the language well reported incomes in excess of that figure.

In summary, all of the empirical evidence points to rapid and complete adjustment of immigrants to the economic life of the country. Whether measured by labor-force participation, occupation or earnings, the foreign born show an initial period of disadvantage followed by upward mobility that finally leads to economic achievement that is equal to or surpasses that of the native born.

Social and Cultural Adjustment

Research also indicates that immigrants adjust rapidly to U.S. norms and patterns of behavior. To attempt to review all aspects of such adaptation within these pages, though, would be an impossibility. Instead, this report will focus on three major areas--family practices, including fertility patterns; education and civic participation. This analysis will be based in large part on studies specially prepared for the Commission on these subjects.

Family Practices

In a paper, prepared for the Select Commission, Kenneth Wolpin analyzed the structure of households of immigrants and natives.[19]

He begins with what he describes as a simple, theoretical perspective: The family is probably the institution most responsible for preparing subsequent generations for participation in adult society. He suggests that the types of household organization prevalent in any society must, to some extent, result from the economic, political and technological environment of that society. This environment makes some organization forms more efficient than others at meeting the goals of individuals within the society, including the successful rearing of offspring. Given this perspective, Wolpin writes, one would expect the household structure of immigrants to differ initially from that of natives, but to converge to the structure prevalent in the native population, as knowledge about the new environment is accumulated and digested. To the extent that the immigrant population wishes to or is forced to insulate itself from the new environment, however, the household structure of the immigrant population can be expected to mirror that of the country of origin, from generation to generation. Thus, it is possible, according to the author, to explore the process of assimilation in the context of household structure.

This paper relies upon data collected in the 1976 Survey of Income and Education (SIE); using this data, the author compares the actual household structures of immigrants by country of origin to those of natives. Households are classified in this paper by head of household--whether the head lives alone, lives without a spouse, but with other individuals, or with a spouse with or without other individuals. The sex and marital status of the head are further delineations of the first set of categories, as are the relationships of other household members to the head (children, grandchildren, related elders, unrelated individuals, and so on).

The findings are as follows:

- Immigrants, as a group, are less likely to reside in nuclear households than are natives. For particular groups, [Cuban immigrants (both sexes), Mexican immigrants (males) and Asian immigrants (both sexes)], the divergence from the native population is substantial. As might be expected, English and Canadian immigrants and European and Scandanavian immigrants (who came from societies similar to the United States) are as likely as natives to reside in a nuclear household.
- Among nonnuclear types of households, the prevalence of households with elders and of households with other relatives are each much greater for immigrants. This is particularly true for Cubans, Europeans and Scandanavians, and Asian females. Asian males are much more likely to live in households which contain unrelated individuals.

- For both male and female immigrants, there is overall convergence of immigrant household structure to that of native structure. This is true even for immigrant groups which begin with a substantially lower propensity for "nuclearity," namely Mexicans and Asians. Most of the gap is closed within 20 years of arrival.
- Immigrants of both sexes are less likely to be divorced or separated than are natives. This pattern holds for all immigrant groups, except for Cubans (both sexes) and Mexican females. Although in this case, the effect of prolonged exposure is less clear-cut, divorce rates do appear to rise the longer the stay in the United States.

Wolpin concludes that previous immigrants to the United States have assimilated with respect to household structures. The nonnuclearity of immigrant households tends to diminish with years in the United States. Even for groups very dissimilar to natives in terms of household structure, Asians and Mexicans, there is complete assimilation in terms of household structure.

Fertility patterns are another important measure of the adaptation of immigrants to U.S. norms and patterns of behavior. In hearings held by the Commission, concern was expressed about the relatively higher levels of fertility demonstrated by some immigrant groups--particularly Mexican Americans--and the possibility that population stabilization--a goal expressed by some--would be undermined.

A paper by Frank Bean, Gray Swicegood and Thomas F. Linsley investigates the manner in which Mexican immigrants have adapted their fertility rates to the experience of living in a country characterized by a substantially lower fertility rate than that of Mexico.[20]

Using data from the 1970 U.S. Public Use Samples and the 1976 Survey of Income and Education, (SIE) the authors examine three generations of Mexican Americans (those born in Mexico, the children of one immigrant and one native born parent, and the children of two native born parents). The dates of entry of the first generation range from pre-1960 to 1976. The authors test two hypotheses. The first hypothesis is that Mexican Americans decrease their fertility depending upon length of time spent in the United States; the second hypothesis is that this tendency is more pronounced among couples of higher socioeconomic status.

The authors provide a review of previous research in order to place their hypothesis and findings in perspective. They suggest that the literature points to a pattern of fertility among immigrant groups that initially involves higher fertility among the foreign born, followed by lower fertility among later generations (possibly even lower, in the case of some second generation groups, than the fertility of native born women of native parents) and, eventually, convergence with the fertility patterns of the native population. The literature on the relationship between socioeconomic status and fertility, according to the authors, is less clear-cut in its findings. They suggest the "minority group status" hypothesis as one of the most promising in explaining fertility patterns. This hypothesis suggsts that since many immigrants and their descendants occupy marginal positions in the receiving society, they will adapt their fertility as a result. Continuing marginality and barriers to minority socioeconomic achievement serve to remind the more assimilated members of the minority groups (that is, those of higher socioeconomic status) of the obstacles they have overcome (perhaps with the aid of reduced childbearing). The authors predict that, among later generations of Mexican Americans, those of higher socioeconomic status will exhibit the most pronounced tendency toward lower fertility.

The findings of this paper are summarized by the authors as follows:

- As measured by the number of children in the family under age 15 and under age 3, Mexican American women aged 20-34 years are found to exhibit higher cumulative and current fertility than comparable other white women.
- Differences in cumulative and current fertility between Mexican American and other white women are reduced substantially, but not eliminated, when female education is held constant.
- In general, differences between Mexican Americans and other white women in fertility are found to decline with rising generational status.
- Among first generation Mexican American women, differences in fertility between these women, when classified by year of entry into the United States, and other white women reveal no consistent, readily interpretable pattern.
- Generational differences in both cumulative and current fertility are reduced substantially when female education is held constant.
- Starting at a higher but ending at the same (or in some instances lower) point, both cumulative and current fertility decline more sharply with rising female education among Mexican Americans than among other whites, other factors being equal.
- Other factors being equal, differences in cumulative but not current fertility between Mexican American and other whites decline most sharply with rising female education among women of later generations.[21]

In general, the findings of this report are consistent with those in the literature described by the authors. Among Mexican Americans, according to the authors, fertility is observed to decrease both with length of exposure to the receiving society and with rising socioeconomic status (measured by female education). The results also suggest that the processes of acculturation and structural assimilation jointly influence the fertility of Mexican American women. The authors conclude that efforts directed at improving educational opportunities would, therefore, seem to offer the greatest promise for further reductions in the fertility of the Mexican American population.

Educational Achievement

Because the majority of immigrants enter this country after they have completed their education, Census data does not provide a very accurate measure of U.S. influences on educational attainment, although some immigrants do supplement their education after arrival. The 1979 Current Population Survey provides information about the level of education of the foreign- and native born, 16 years of age and older:

	None	1-8 yrs.	Attended high School	Attended college
Native born	0.5%	12.5%	56.6%	30.4%
Foreign born	3.3%	30.8%	38.9%	27.0%

This evidence indicates that the native born are, on average, more likely to have finished high school than the foreign born. Almost the same proportion, however, are likely to have completed college. Immigrants differ by country of origin. Mexicans, for example, are less likely to have attended college (7.5 percent) than are those from Asia (Philippines--54.9 percent, China and Taiwan--48.7 percent and India--75.7 percent).

Among the foreign born, age 16 through 24, who arrived early enough to receive the major part of their education in this country, the likelihood of finishing college is greater than for the native born, and the possibility of finishing high school is almost as strong. Of the foreign born in this age group who arrived from 1960 through 64, 63.0 percent attended high school compared to 71.1 percent of the native born. Of the foreign born of this group, 35.1 percent attended college compared to 25.6 percent of the native born. The proportion of female and male immigrants of this group who attended college is 42.9 percent and 28.6 percent, respectively.

In a study prepared for the Select Commission on the educational achievements of the children of immigrants, T. Paul Schultz found (using 1976 SIE data) a similar pattern to that of the 16 through 24 year olds described above.[22] He discovered that the children of immigrant parents are somewhat less likely to complete elementary school than are the children of natives, but once having completed the elementary grades have about the same or better likelihood of completing high school or college. Girls, he found, are generally ahead of boys in school achievement until they leave high school. From ages 4 through 29, children of immigrant parents are more likely than children of native parents to be attefding school, regardless of sex.[23]

The effect of parent birthplace on a child's schooling is small, according to Schultz, but generally statistically significant. The children of immigrants from the Asian countries of Japan, China, the Philippines and Korea and those from European countries tend to secure more schooling than is accounted for by other variables. Where both parents or only the mother came from Mexico, the children on average had 2.4 and 3.1 fewer years of schooling, respectively. The number of years-in-residence in the United States is associated with increased schooling if both parents are immigrants. But for the children of mixed immigrant-native couples, schooling levels are lowest for children whose immigrant parents have resided here for 4 to 9 years.

The perpetuation of relative educational status from parent to child is weaker among immigrants than among native U.S. families. The children of immigrants are apparently more more mobile, upward and downward, from the educational status of their parents than is the case of children of native-born parents. Differences in the educational system of the United States and the countries of origin may explain this difference, according to Schultz, especially if the school system attended by immigrant parents did not screen as effectively on ability as those of the United States.[24]

Comparison of Naturalization Rates Among World and Five Major Sending Countries, by Year of Entry

(By Percent of Total Admitted Who Naturalized by September 30, 1979)

Year of Entry	World	Mexico	Canada	Philippines	Korea
1967	29.8	4.8	8.4	79.9	74.3
1968	24.7	4.5	6.0	72.6	*
1969	32.4	3.9	5.9	79.5	86.7
1970	28.0	3.5	6.2	51.8	83.6
1971	26.4	2.8	6.1	53.8	74.9
1972	21.5	2.5	5.6	54.2	51.2
1973	13.7	1.2	4.5	32.7	39.3
1974	5.9	0.6	2.5	16.6	17.8
1975	3.6	0.5	1.5	11.5	11.8
1976	1.6	0.2	0.6	5.3	6.2

SOURCE: Table 44, INS Annual Reports 1967-1978; 1979 data unpublished.

*Because of anomolies in the data, the naturalization rates for Koreans who entered in 1968 is over 100 percent.

Civic Participation of Immigrants

Naturalization is a necessary, though not the only, condition for full civic participation. In 1979, 164,150 immigrants became U.S. citizens. Of those who naturalized, 45.1 percent were males; and 54.7 percent had arrived in the country from 1970 through 1974, with the largest single number (30,480) coming in 1973. As the table on the preceding page indicates, about 30 percent of the immigrants who entered from 1967 through 1971 have naturalized. The rates of naturalization vary by country of origin. Immigrants from the contiguous countries of Mexico and Canada have very low rates, while those from the Philippines and Korea have very high rates of naturalization.

These figures must be interpreted cautiously. Naturalization rates are affected by the rate of return migration. Those immigrants who emigrate soon after immigrating cannot naturalize and those who plan to repatriate are less likely to seek U.S. citizenship than are those who plan permanent settlement in this country. Groups in the past that have had high levels of return migration have demonstrated a pattern of low naturalization and this is the case today. For example, Italians, who often expected to or actually did come for short periods of time at the turn of the century, had a naturalization rate of 17.7 percent in the 1910 Census. In the years after World War I, many Italians decided to settle permanently and the naturalization rates began to climb. In 1930, 50 percent of the foreign-born Italians in the United States were naturalized, as were 79.5 percent in 1950.

Naturalization rates are also affected by the age of immigrants on entry. The elderly may die or be unable to meet the requirements. Also, the presence of children may skew patterns of naturalization because children under 18 years are not eligible for naturalization except for orphans adopted by U.S. citizens), instead they derive U.S. citizenship through their parents when their parents naturalize. If their parents do not naturalize, they must wait until they are 18 years old to be eligible on their own. If there are large numbers of young children ineligible in entry cohorts, naturalization rates may be lower than would otherwise be the case.

Naturalization patterns of Mexican immigrants can be explained in part by these factors of age distribution and return migration. Traditionally, a smaller proportion of Mexicans have naturalized. According to the 1970 Census, 38.8 percent of the U.S. population born in Mexico had naturalized, while the overall rate of naturalization was 63.6 percent. The distribution of naturalizing immigrants by year of entry differs significantly between Mexican and other immigrants. In 1979, only 21.6 percent of all naturalizing immigrants had arrived in this country before 1967, the rest having arrived at a later date; among naturalizing Mexicans 59.9 percent had immigrated before 1967. It appears that Mexicans may take a longer period to determine their intent and/or to meet all the requirements with regard to citizenship.

In a paper prepared for the Select Commission, John A. Garcia examined the patterns of civic participation of Mexican immigrants to the United States. His study, using data collected in the 1979 Chicano Survey of Mexican Americans, surveys a generally well-established, residential population.

He found that only 16 percent of the respondents in his Mexican-born sample have naturalized.* Because of the low levels of naturalization, the level of electoral activity is also very low (10 percent). Among naturalized citizens, though, electoral activity is very high (71.1 percent) and is, actually, considerably higher than the national average. Despite the low level of participation, support for the importance of voting was very high--76.7 percent believing that it was very important.[25]

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*Garcia found that there is no correlation in his sample between length of stay and naturalization.

Garcia concludes that, among his sample, willingness to participate in the political process is far more discernible than actual political participation. Asked if they planned to naturalize, his respondents showed a slightly greater tendency to plan to naturalize (55.5 percent) than not. Those who said that they did plan to naturalize generally cited the benefits--access to a broader range of programs, greater employment opportunities and the ability to bring relatives into the country--that would accrue from that status. Those who said that they did not plan to naturalize said that they had no real need (12.1 percent), no interest in citizenship (10.6 percent), wished to maintain allegiance to Mexico (7.7 percent) or the process was too complicated (8.1 percent).[26]

Overall, he reports, the extent of identification as an "American" rather than a "Mexican" was low. As far as direct contact with Mexico was concerned, the study found that respondents had extensive family ties in Mexico and half of the respondents made at least one trip to Mexico during the year of the survey. In the United States, respondents showed a preference for Mexican events and Spanish-language programs; the vast majority indicated a preference for interactions with other Mexican Americans. Many of these immigrants, like innumerable "greenhorns" before them, see themselves essentially as foreigners living in the United States, even those who have lived in this country for an extended period. All of these variables were associated with a tendency against naturalization. On the other hand, English-language acquisition and attainment of a higher level of education were positively associated with obtaining naturalization.

Garcia believes that U.S. practices, not only lack of Mexican American identification as U.S. residents, explain the low level of naturalization among Mexican Americans. He argues that what he terms the passive stance of the Immigration and Naturalization Service towards naturalization needs to be reexamined. He found, in his sample, that the potential for naturalization was strong, but that "the chilling effect [of] organizational attitudes that have characterized the Service" have often dampened the interest in citizenship.[27]

Sociocultural Adaptation--Conclusions

In general immigrants to the United States have shown a marked pattern of adaptation to U.S. practices--whether measured by household structure, educational level, fertility levels or naturalization. The extent of this adaptation seems to be more closely related to a combination of rising socioeconomic status, usually measured by education, and length of exposure to U.S. society than it is to the immigrant's country of origin. That this combination of factors is so strongly associated with adaptation is an important point. As demographer Charles Keely has noted, "a simple assumption that time alone will lead to convergence in behavior or the distribution of some characteristic (compared to some U.S. norm) is not necessarily correct. The continued, even increased, commitment of the society to real opportunity for all must go hand-in-hand with a commitment to an open society."[28]

The Economic Impact of Immigration on U.S. Society

Economists and historians generally agree that, in the past, immigration has contributed to overall economic growth in the United States. With regard to the effect on today's economy of varying levels of immigration, experts differ. There is agreement, though, that the future, long-term effects of immigration will depend not only on the size but also on the characteristics of immigrants and of the U.S. economy.

Despite the risk of overly simplifying so complex an issue, it is possible to group those who discuss the impact of overall immigration levels along a spectrum of opinion. At one end of the spectrum are those who argue that immigrants are taking jobs in what is essentially a fixed-job universe. These theories have been most explicitly developed with reference to undocumented/illegal immigration and the entry of unskilled workers.* In the center of the continuum are those who argue that immigration has either no effect or mixed effects that may cancel each other out. At a Select

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*See Chapter IX for fuller discussion of this position.

Commission hearing, Markley Roberts of the AFL-CIO, testified that "immigration is 98 percent irrelevant to economic development and productivity."[29] Michael Greenwood, in a paper prepared for the Interagency Task Force on Immigration Policy suggests that "the so-called aggregate effects of immigration do not appear to be sizeable," although he does find them to have localized effects.[30] Agreeing that there are localized and short-term negative impacts, George Johnson, also writing for the Interagency Taskforce, concludes that immigration permits occupational upgrading throughout the population that has the potential for reducing negative distributional effects.[31]

Some economists argue that immigration, however large, causes substantial economic growth and immigrants have a beneficial effect on the wages and employment possibilities of other U.S. residents. They argue that an increase in the number of workers does not, overall, cause hardships for natives. In an early exposition of this position, W.S. Bernard wrote: "One of the most persistent and recurrent fallacies in popular thought is the notion that immigrants take away the jobs of native Americans. This rests on the misconception that only a fixed number of jobs exist in any economy and that any newcomer threatens the job of any old resident."[32] Julian Simon testified at a Select Commission hearing that "immigrants create jobs as well as take them. They create them by starting new businesses for themselves. They create jobs, either directly or indirectly, when their goods are exported."[33] According to this line of reasoning, immigrants cause an expansion of the market for goods and induce benefits attributable to economies of scale. Further, immigrants contribute to technological innovation and entrepreneurial activity, and, as a result, provide opportunities that might otherwise not have existed.

Other economists have argued that the impact of immigration is more complex and that immigrants affect job opportunities and earnings of different groups of natives in relation to their level of skill. Barry Chiswick has pointed out that "immigrants do not have a uniform impact on the native population. Some native groups gain and others lose. The level and distribution of the impact depends on the relative skill characteristics of the immigrants."[34] He explains the process:

> An increase in the supply of unskilled workers due to immigration decreases the marginal product (wages) of unskilled labor and increases the marginal product of skilled workers and capital. As aggregate income in the economy increases by more than the total wages of the immigrants, the aggregate income of the native population is increased. . . . However, the aggregate income of native unskilled workers declines. . . .
>
> Suppose, however, the immigrants are skilled workers. This lowers skill differentials and lowers the aggregate income of the native-born, skilled workers, but raises the income of unskilled workers and capital. The aggregate income of the native population also increases.[35]

According to Chiswick, immigration benefits the holders of capital because it increases the productivity of the factors of production owned by the native population. Also, immigrants encourage increased investment expenditures, thereby contributing to increased aggregate demand which further encourages economic growth.

Aside from its impact on economic growth, immigration is important in considering the potential for labor shortages in the future. William J. Serow testified at a Select Commission hearing about the adequacy of the future labor supply. He concluded that "even with the growth of labor productivity and the continuing increase in female labor-force participation that are assumed in these projections, the growth in the number of jobs during the first portion of the next century seems likely to occur at a rate exceeding that of the labor supply."[36] Michael Wachter, in his study "The Labor Market and Immigration: The Outlook for the 1980s," estimates the magnitudes of estimated labor shortages and surpluses in each of nine major occupational categories. Breaking the demand and supply down by sex, he estimates that by 1985 shortages will occur in two areas that cannot be offset by women in the same category--managers and administrators and nonfarm laborers and service workers. The labor-market adjustment needed to fill the first set of occupations with native workers would involve an occupational upgrading of females, in which they would be integrated into managerial positions "without much dislocation," according to Wachter.[37] The adjustments needed to fill the lower-skilled jobs, on the other hand, would involve an increase in wages, a relatively slower upgrading of the baby boom generation so that more of its members could fill these low-skilled occupations, a substitution of capital for lower-skilled labor, and a change in the sex distribution of employment in these categories.[38] An increase in the number of lower-skilled immigrants, though, would avoid some of the dislocation this adjustment would involve.

There are not only differential economic impacts by occupation and skill level, there are also differences depending on location of immigrants. As we have seen, immigrants tend to cluster in urban areas in a small number of states. Michael Greenwood, in a paper prepared for the Interagency Task Force on Immigration Policy, noted that "we can probably conclude with some assurance that New York, Los Angeles and Chicago [areas with high immigrant concentrations and highly developed industrial economies] experience labor market impacts due to immigration that are absolutely somewhat greater than those experienced elsewhere. The relative impacts are also likely to be fairly sizeable compared to those on most other cities."[39]

Local officials differ as to the impact of immigration upon their communities. In a study of the effects of immigration on cities, Milton Morris notes that officials of Corpus Christi, Texas believed that immigrants were not a vital element in their city's labor force. On the other hand, the mayor of Jersey City recounted his efforts to attract Jewish refugees from the Soviet Union to his city because he had seen the way in which Cuban refugees had revitalized a neighboring community.[40] Many cities, faced with a sudden influx of newcomers--particularly refugees requiring special aid in their transition to U.S. society--find that local institutions are overburdened at first, even if the new arrivals ultimately contribute their fair share towards maintaining them.*

Thomas C. Parker, Deputy Planning Director of Arlington County, Virginia, testified before the Select Commission on the effect of immigrants on job creation and entrepreneurship. Describing the benefits that have occurred since their arrival, he noted that Arlington County has become a center of Indochinese life since 1975. The Indochinese experience he described is not unique. Immigrants and refugees have been among the most productive, enterprising members of U.S. society. And, in their desire to succeed in their new lives, they provide opportunities not only for themselves but for U.S. residents as well.

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*See U.S. Immigration Policy and the National Interest, Final Report, for recommendations regarding impact aid to communities.

Impact on Cash Assistance Services

Permanent resident aliens are eligible for a range of social and educational services. The degree of utilization of these services has an effect upon the overall costs of immigration. Permanent resident aliens are eligible for social security benefits, unemployment compensation, Aid to Families with Dependent Children (AFDC) and food stamps, if they otherwise meet the requirements. Recent legislation has imposed new requirements on Supplemental Security Income (SSI) payments. A permanent resident alien must be in this country for three years before becoming eligible for this service.*

Research indicates that immigrant use of cash-assistance programs is substantially less than native use. David North, using 1979 data collected for the Social Security Administration, shows that in 20 of 25 jurisdictions examined, AFDC payments to the foreign born were less--often considerably less--than would be suggested by the incidence of the foreign born in the 1970 Census.[41] Julian Simon, in a study prepared for the Select Commission using 1976 Survey of Income and Education data, found immigrants use less public service funds, largely because of differences in social security, than do native families from the time of their entry until about 12 years later, when their usage roughly equals that of native families. Simon also found that after two to six years, immigrant families pay as much, and then substantially more, in taxes than do native families. He concludes that the net balance of payment is in the public's favor; immigrants contribute more to the public coffers than they take.*[42]

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*Refugee eligibility requirements differ from those affecting other immigrants. See U.S. Immigration Policy and the National Interest, Staff Report, pp. 153-200, 428-41, for fuller description of services and requirements for refugees.

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*Barry Chiswick, although not disputing these conclusions, argues that the simple ratio of contributions to receipt of benefits is inadequate to address the issue of whether legal immigration constitutes a drain on or benefit to the U.S. welfare system. He suggests that the effect of immigrants upon native employment and earnings must be taken into account, since those factors could affect native use of services and payment of taxes. He is currently working on this project.

Impact on Health Services

Immigrants are eligible for medicare reimbursement if they are covered by social security and meet the normal requirements. Lawful permanent residents age 65 or older who have been in the United States for five consecutive years may also obtain medicare coverage on a voluntary buy-in basis if they do not qualify on the basis of social security status. Immigrants are also eligible for medicaid coverage if they meet the requirements as to level of income, assets, residency and family composition. The majority of immigrants, not unlike most U.S. citizens, are ineligible for publicly supported health care and must rely on insurance or private funding.

Several recent studies have addressed the health status and needs of immigrants. Many of these reports cite the low utilization of health services by immigrants. Separate studies conducted by the Department of Health and Human Services, the Mexican-American Policy Research project, and the State of Hawaii Department of Health conclude that this low utilization comes from a variety of reasons--cultural differences with regard to medical care, language difficulties in communicating with medical personnel and severe maldistribution of medical resources in areas of high immigrant density. The effect of the low utilization appears to be more serious for imigrants than for U.S. society. A 1980 HHS report concluded that "where illness is present, it is most likely to represent a personal rather than a public health problem."[43]

T. Paul Schultz, in a study prepared for the Select Commission, examined the health status of the children, age 4 through 49, of immigrants. Examining subjective measures, he found, using 1976 SIE data, that these children are less likely than the children of native-born parents to report chronic health problems or medical conditions that limit school or work activity. With increased residence in the United States, immigrant parents often report more frequently the health conditions that limit their childrens' activities. It is unclear from the data, though, whether there is an actual change in health status, if parents are altering their ideas about what constitutes health status or whether their own reporting ability has improved.[44]

Schultz does not reach any conclusions about the use of health services. But, assuming an unproven though not unlikely correlation between an individual's judgment of health and likelihood to seek medical services, one can infer from his findings that the children of immigrants would be less likely to use such services.

Demographic and Environmental Impact of Immigration

During the past decade, worldwide concern has been expressed about population growth and resource utilization. The Environmental Policy Act of 1969 heralded a new era in U.S. policy when it declared that it was the responsibility of the federal government to use all practicable means in order that the nation may "achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities."

The level of annual immigration is one of the determinants of the future size, age composition and growth rate of the U.S. population. While experts agree that these demographic characteristics are more sensitive to variations in fertility than to changes in the level of immigration, many proponents of population control point out that immigration is the only component of national population growth that can be limited directly by government policy. Hearing these arguments, the Select Commission examined population projections for the next 100 years based on different assumed levels of U.S. fertility and alternative levels of annual immigration.

Demographer Leon Bouvier, beginning his work while on the staff of the Commission, has published his projections in a monograph entitled, "The Impact of Immigration on U.S. Population Size."[45] He determined, first of all, that the effect of fertility changes on population size is, in fact, stronger than that of immigration. Even very slight increases in fertility result in large increases in population. An increase of just 10 percent in fertility (1.8-2.0), holding immigration constant, results in more growth in 20 years than a 50 percent increase in net immigration (500,000 to 750,000), holding fertility constant.

Bouvier calculated that if fertility levels remain at 1.8, annual net immigration of 500,000 (gross immigration of 650,000 assuming an emigration rate of 30 percent) would lead to a population of 274 million in 2050 and a growth rate of -0.08. With the same fertility rate, with a net migration of

750,000 (gross immigration of 975,000), the population would be 298 million in 2050 with a growth rate of 0.04. An increase in fertility levels--to 2.0, for example--would mean significant increases in population. At that level, and with net immigration of 500,000 the population would be over 300 million in 2030 and the growth rate would be 0.2 percent.

Not only the size of the population but the age structure is affected by the combination of fertility rates and immigration. With low levels of fertility, a society tends to increase its median age. In 1980, the median age is 30.2 years. Bouvier calculated that with no net immigration and a fertility rate of 1.8, the median age of the population would be 42.4 years in 2030 and 43.4 years in 2050. With the same fertility rate and net immigration of 500,000, the median age would be 41.4 years in 2030 and 42.1 years in 2050. With higher net immigration, the median age decreases still further, although the decreases in all of these cases are far from great. With 500,000 net immigration--assuming a fertility rate of 1.8--the age distribution would also shift. Without net immigration, 23.0 percent of the population would be age 65+ in 2050; with net immigration of 500,000, 21.5 percent of the population would be of that age. With immigration, the

20 through 64 years age group would increase from 55.0 to 55.8 percent, and the 5 through 19 years age group would increase from 16.7 to 17.1 percent. The absolute numbers in all of these categories would, of course, rise because of the increase in the overall population attributable to immigration. Once again, though, the age distribution--as with population size--is more sensitive to changes in fertility than to immigration. An increase in fertility from 1.8 to 2.0--with no net migraion --will result in a lower proportion of elderly by 2030 than will net migration of 500,000.

Although the impact of immigration is much smaller than that of fertility, there are consequences to all demographic changes, regardless of magnitude. The Select Commission has heard a range of opinions about the ramifications of population growth that is caused by immigration. Of particular concern has been the effect of immigration on natural resources and food consumption.

David Pimentel testified at a Select Commission consultation that rapid increases in U.S. population, such as come from immigration, could have a deleterious effect on the nation's resources and capacity to feed itself. He argued that U.S.

arable land is being rapidly depleted because of urbanization and soil erosion, and that, assuming a limited increase in agricultural production, a 24 percent increase in U.S. population over the next 25 years would result in the consumption of all the food produced here.[46]

Anne Ehrlich testified, at the same consultation, that immigration to the United States could have serious consequences for the environment. She noted that:

> Americans are by a considerable distance the world's leaders in environmental impact; we use twice as much energy per person as most Europeans and as much as 100 times as much as citizens of some of the poorest developing nations. Thus any additions to the United States population could be expected to have a far greater impact on the world's environment (and resources) than the same number of people added to the population of any other nation--unless, of course, there were a corresponding reduction in our consumption of goods or a switch to less environmentally damaging technologies.

She also pointed out that even a relatively small increase in the population can cause a disproportionate environmental impact. As an example she presented an "oversimplified example": "suppose there were two cities of equal size 20 miles apart, with 20 miles of highway connecting them. Now, suppose to accommodate population growth, a third city of the same size is established 20 miles from each of the first two. To maintain communications there must be 40 miles of highway added between them. The population of the area has increased by only 50 percent, but the amount of highway has tripled."[47]

Not all experts on resource utilization agree with these assessments. In a response to Dr. Pimentel's written report, a representative of the U.S. Department of Agriculture stated: "While there are genuine concerns surrounding our present resource use, we do not agree that the food production capacity will be inadequate in the foreseeable future, i.e., by the year 2000, as is implied in Dr. Pimentel's statement."[48] And, Roger Revelle, also a participant at the Select Commission consultation on resources, wrote regarding the environmental impact:

> I cannot agree with the statements of some of the participants that by allowing immigrants to come to the United States, world natural resources would be depleted more rapidly than if the immigrants had remained in their own poor countries. Anyone who has seen the terrible destruction of land and biological resources in Haiti, or the Hills of Nepal and Pakistan, must be convinced that the poverty-stricken people of those countries are destroying their own natural resources at a far greater rate than is happening anywhere in the United States. They are doing this because the grim necessity of staying alive now prevents them from conserving their environment for their own long-range future.[49]

Revelle offers a highly positive scenario regarding the effect of immigration on resources. He argues that "resources are those entities that can be used by human beings to increase the sum total of human welfare." By his definition, there are three types of resources: men and women themselves, things created by men and women and natural resources. Revelle suggests that the poverty of many countries serves as a "waster of human resources," preventing those crippled by poverty to put their ideas, skills, drives and energy toward constructive purposes. International migration, he argues, can be an effective way of restoring these human resources. In such cases--since immigrants are often self-selected achievers--not only do the immigrants themselves benefit, but so too do the receiving countries that benefit from their presence.[50]

While Dr. Revelle's argument about human resources is compelling--as is the evidence of the adaptation and achievement of immigrants--it is still true that the United States is not capable of absorbing an infinite number of new arrivals each year. It is important for this country to have an immigration policy that carefully weighs economic, social and demographic considerations regarding the number of immigrants to be admitted. It is, therefore, critical that official immigration policy rather than the unofficial practice of undocumented/illegal entry determine the number of immigrants that come to this country.

Footnotes

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4. U.S. Department of Commerce, Bureau of the Census, Statistical Abstract of the United States (Washington, D.C.: Government Printing Office, 1979), p. 14.

5. David S. North and William Weissert, Immigrants and the American Labor Market, Manpower Research Monograph No. 31 (Washington, D.C.: U.S. Department of Labor, Manpower Adminstration, 1974), pp. 24-26.

6. U.S. Department of Health, Education and Welfare, Office of Refugee Affairs, Report to the Congress, Indochinese Refugee Assistance Program (Washington, D.C.: Department of Health, Education and Welfare, December 31, 1979.) For full discussion of employment of Southeast Asian refugees also see Robert L. Bach and Jennifer B. Bach, "An Employment Profile of Southeast Asian Refugees in the United States," Report prepared for the Department of Labor, Employment and Training Administration, Office Research and Development, (Washington, D.C.: Brookings Institution, June 1980), passim.

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10. Barry Chiswick, "Immigrants and Immigration Policy," in Contemporary Economic Problems, edited by William Fellner, (Washington, D.C.: American Enterprise Institute, 1978).

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21. Bean, pp. 50-51.

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49. Letter from Roger Revelle, Department of Political Science, University of California, San Diego, to Lawrence H. Fuchs, Executive Director, Select Commission on Immigration and Refugee Policy, July 10, 1980. Letter File, Select Commission papers.

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CHAPTER VII: THE PRESENT IMMIGRATION SYSTEM--ITS ORIGINS AND OPERATIONS

Introduction

Although admission to the United States was first controlled in the late nineteenth century through qualitative means, since the 1920s who would be allowed to immigrate to the United States has been both a qualitative and a quantitative decision. Not only must prospective immigrants not be excludable, they must also fall within the bounds of total immigrant visas allocated worldwide, those allocated to persons in the same classification category and those allocated to persons from the same country. The ease with which these hurdles can be overcome has depended on policy decisions about how visas are allocated and on the amount and type of demand in various countries. These factors, over time, have combined to create patterns of immigration--and lack of immigration opportunity--which have ultimately resulted in the call for changes in policy. These policy changes have led to new immigration patterns which, in turn have resulted in further problems and ameliorative policy changes.

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This chapter focuses on the general development of U.S. policy toward admitting immigrants and the results and problems of successive changes in immigration law, each contributing to the evolution of immigration policy and the search for the perfect immigration policy. It discusses, in brief, the provisions of immigrant admissions policies from 1921 through 1978 and the effects each has had on who enters. Although in the 1978 amendments to the Immigration and Nationality Act, Congress believed it had achieved equality in immigration law, it in the same act, created a Select Commission on Immigration and Refugee Policy "to help pave the way for future development in immigration and refugee law and policy."[1]

National Origins as a Criteria for Admission

The establishment of numerical limits on immigration in the 1920s, as described in the previous chapter, reflected a growing concern about the large numbers of immigrants--averaging 900,000 per year--coming to the United States in the first 15 years of the twentieth century.

These restrictions also responded to U.S. uneasiness over the preponderance of southern and eastern Europeans in turn of the century immigration and to the fear of heavy new immigration as a result of the First World War. Head taxes, more stringent grounds for exclusion and the barring of many Asians had not sufficiently controlled immigration. Although many bills calling for the elimination of immigration for various time periods failed, the first Quota Act was enacted in 1921 and limited immigration to 3 percent of the foreign born of each nationality enumerated in the 1910 Census. Although favoring northern and western Europeans, many viewed the roughly 350,000 immigrants admissible under this law as too many and saw the proportion of southern and eastern Europeans as too great since the size of the resident population attributable to this group had increased significantly between 1890 and 1910.

A second Quota Act was passed in 1924 and set country quotas at 2 percent of the foreign-born population enumerated in the 1890 Census, with guaranteed minimum quotas of 100. This act reduced both total immigration and the proportion coming from southern and eastern European countries. It also barred the immigration of aliens who were ineligible for citizenship, a provision aimed primarily at the Japanese. At the time of the 1924 Act there was further concern that quotas should be based on the national origins of the entire U.S. population rather than only on the foreign-born segment and that "the fundamental institutions of the nation" and its "superior position" should be preserved.[2] The 1924 Quota Act, in addition to its quota system based on the 1890 Census, provided for a new method of determining quotas--the national origins system--which was based on both the native and the foreign-born population as enumerated in the most recent (1920) Census. This system was to replace the original system once a methodology for determining quotas and the necessary calculations were completed.

The stated purposes of the national origins system were largely twofold: to provide a basis for selecting numerically limited immigrants and to preserve the composition of the U.S. population based on the proportionate contribution of the different nationality groups. This second goal has been stated as "the will of Congress to preserve the racial composition of the United States through the selection of immigrants from those countries whose traditions, languages, and political systems were akin to those of this country."[3]

Indeed, although including the recent influx of southern and eastern European immigrants in the calculations, the national origins quotas had the effect of strongly favoring northern and western European nations since they took into account the descendants of the largely British colonial stock and the predominantly northern and western European immigrants of the first three-quarters of the nineteenth century enumerated in the native and foreign born populations. This effect was accentuated because in the computation of national origins Western Hemisphere natives, aliens ineligible to U.S. citizenship and their descendants (most Asian nationalities), and descendants of slaves and native Americans were excluded. Thus, in effect, only the white U.S. population of European origin was left as a base.

Three years--which stretched to five--were provided for determining quotas under the national origins system. The problems in developing a sound methodology were numerous. The first complete census of the U.S. population was not taken until 1790, and the foreign-born population was not listed by country of origin until 1850. The additional step of tabulating census data on ancestry of native-born persons of foreign-born parents was not taken for another 40 years, and additional problems existed in classifying, for national origins quota purposes, persons of mixed origin. Immigration by nationality was not maintained until 1820. After considerable manipulation of available data, annual quotas for each nationality (outside the Western Hemisphere) were established and made effective July 1, 1929. These quotas were based on the same ratio to 150,000--the approximate, desired ceiling on immigration--as the number of inhabitants in the United States in 1920 of each nationality to the total U.S. population in 1920, with a minimum guaranteed quota of 100.

As under the 1921 quota law, the 1924 Immigration Act also provided for the entry of some groups of immigrants outside of the national origins quotas. The nonquota category included the wives, husbands (providing that the marriage occurred before a specified date) and the unmarried children under the age of 21 of U.S. citizens, natives of independent nations of the Western Hemisphere, certain ministers, professors and expatriated citizens, and a few other relatively minor groups of immigrants. Although there was extensive opposition to the nonquota status proposed for immigrants from the Western Hemisphere because of their similarity to the less assimilable southern and eastern Europeans, the exempt status was continued. The rentention of a nonquota status for immigrants from the Western Hemisphere recognized the futility of trying to protect extensive U.S. land borders from illegal entry, the lack of a base population on which to calculate national origins quotas for some nationalities, and the good neighbor policy that existed between the United States and other Western Hemisphere nations.

To provide a further systematic means of determining priority in the selection of quota immigrants, preference and nonpreference classes were established. These priority groupings recognized the importance of preserving the unity of immediate families and the need for skilled--but not unskilled--agricultural workers in the United States at a time when there was an estimated shortage of four million farm laborers following the migration of workers from farms to industrial cities during World War I.

The first preference, to which 50 percent of each country quota was allocated, included two major groups of immigrants, neither of which had priority over the other within the preference. The first group included the parents of adult U.S. citizens and husbands of citizens, provided that the marriage had taken place after a specified date prior to which nonquota status would be available (originally set at June 1, 1928 but subsequently updated to July 1, 1932 and later to January 1, 1948). The second group included skilled agricultural workers whose knowledge was based on either formal education or practical experience. The second preference, to which the remaining 50 percent of each country quota plus any unused numbers from the first preference were allocated, gave priority to the wives and the unmarried sons and daughters, under age 21, of permanent resident aliens.

Any unused numbers from the two preferences were allocated to the nonpreference category which was subsequently divided by regulation into priority groupings to facilitate visa issuance. If there was unmet demand within a country in the first preference, however, any unused quota numbers from the second preference were made available, in the order of application for visas, to both first preference and nonpreference applicants. Top-priority nonpreference immigrants included children aged 18 to 21 years, born in quota countries and accompanying their Western Hemisphere nonquota immigrant parents to the United States, and to the spouses and minor children chargeable to quotas who were accompanying certain immigrants to U.S. territories. First-priority nonpreference immigrants included three coequal groups: certain aliens who had served honorably in the U.S. armed forces, aliens recommended by the Joint Chiefs of Staff as persons whose admission was highly desirable to promote national interest, and, from 1945 until 1948, certain displaced persons. Second-priority nonpreference immigrants included aliens who applied for visas between July 1, 1941 and July 1945. The final category, nonpriority nonpreference, included all other immigrants.

Although formulated to provide an immigrant flow which matched and would preserve the composition of the U.S. population, the national origins system was unable to force immigration into the mold it had cast. As has already been discussed, several groups were admitted by statute outside of the quotas. Some--such as wives of U.S. citizens and natives of independent Western Hemisphere nations--were sizeable and accounted for a significant and at times major portion of immigrant admissions. This policy was criticized as having "the effect of closing the front door to immigration and leaving the back door wide open."[4]

As luck would have it for the framers of the national origins system, demand tended to be highest in countries with low quotas and relatively low in countries with high quotas. This trend not only reflected improvements in job opportunities and the standard of living in many northern and western European nations coupled with less favorable situations in southern and eastern Europe, but also normal immigration patterns. As has generally been the case, the pattern of demand for immigrant visas is an echo of the most recent immigration. While northern and western European immigrants entered earlier and tended to enter in family groups, millions of southern and eastern European men had migrated alone to the United States in the early twentieth century, had found jobs, and many were ready to bring their wives, children, parents, siblings and other relatives to join them at the time quotas were introduced. Suddenly the open door was essentially closed to many of the relatives of earlier immigrants who had compelling reasons to come to the United States. Many former immigrants already in the United States became U.S. citizens and were able to bring their wives and children outside the quota limitations, thus further skewing the desired national origins mix of immigrants. As a result, while less than 5 percent of northern and western European immigrants entered outside of the quotas, close to half of those from southern and eastern European nations came as nonquota immigrants.[5] Although this in part reflects the the tendency of northern and western European immigrants qualified for nonquota status to chose the easier route of nonpreference quota entry, it nevertheless reflects a significant immigration pattern.

Data from the 1930 to 1952 period shows that only about half the expected proportion of northern and western Europeans immigrated to the United States, while twice as many came from southern and eastern Europe. Although only 5.6 percent of the population in 1920 originated in the nonquota Western Hemisphere countries, close to one-quarter of all immigrants came from these countries. While quotas from northern and western European countries regularly went unfilled, those from the rest of Europe were always full, with large numbers of qualified applicants required to wait for available quota numbers.

The patterns in immigration to the United States that followed the institution of the national origins quotas also affected the characteristics of these migrants. Unemployment and the general economic depression during the 1930s served to reduce the number of male immigrants seeking employment. At the same time, more women entered as wives of earlier immigrants, either outside the quotas as wives of U.S. citizens or as second-preference wives of permanent resident aliens. Over time, women also exceeded the number of men immigrating from nonquota Western Hemisphere countries.

After the quotas were enacted there were also substantial increases in very young and elderly immigrants. The increase in young immigrants reflected the nonquota status given children of U.S. citizens, the second-preference status for children of permanent resident aliens and the proportionately greater number of children in families emigrating from high-demand southern and eastern European countries. Similarly, the greater number of elderly immigrants reflected the desire of many recently naturalized former southern and eastern European immigrants to bring their parents to the United States under the first preference.

These trends--more women joining spouses in the United States, more children and more elderly--also resulted in increased entries of married immigrants and immigrants who reported no occupation. This new pattern was in sharp contrast to the largely male, labor-oriented migrations of the turn of the century. Interestingly, even with first-preference status for skilled farm workers, the immigration of such laborers dropped considerably beginning in the 1920s, in part reflecting the low quotas for southern and eastern European nations from which most agricultural workers came. The immigration of skilled workers of all types increased, however, as such persons fled the worsening political situation in Europe and the wartime expansion of industry and need for such workers in the United States.

Beginning in the 1930s some of the bars against Asian immigration were relaxed. With their independence in 1934, a small quota was established for the Philippines. In 1943, the United States recognizing an ally in war, also repealed the Chinese Exclusion Laws and established quotas for Chinese persons--regardless of place of birth--and non-Chinese born in China. In 1946 races indigenous to India were also allowed to immigrate and naturalize.

One of the major deficiencies of the 1924 Immigration Act was its silence on refugees. Persons fleeing Europe in the 1930s and early 1940s were admissible only if quota numbers were available or if they otherwise qualified for nonquota status, and if they could pass the public charge and other qualitative exclusionary criteria in U.S. immigration law. Following World War II, however, millions of Europeans were homeless. Some Americans called for the humanitarian nonquota admission of substantial numbers of such displaced persons; others called for continuing the strict quota provisions of the law in place. As described in the previous chapter, in late 1945 President Harry S. Truman issued a directive calling for the limited admission of displaced persons from Europe. However, this directive, operating within congressional limits provided entry to only 40,000 displaced persons. In 1948, the Displaced Persons Act was passed which as amended, provided that over the next four years, 341,000 immigrant visas might be issued to eligible displaced persons within specified categories based on occupation, skills and relationship to persons in the United States. These displaced persons were to be admitted within the existing quotas, however, although provision for the mortgaging of up to 50 percent of a country's annual quota was made to facilitate entry under this act, and ultimately the oversubscribed quotas were cleared, thereby eliminating long waiting lists in countries where quotas had been severely mortgaged. Further immigration pressures resulting from World War II were alleviated by the War Brides Act of 1945 and the GI Fiancees Act of 1946.

All of these actions preceding and in the aftermath of the war further served to unbalance the national origins system by bringing in additional immigrants outside of the quota system. By the mid-twentieth century there was concern, if not realization, that a thorough review of the entire immigration system and the displaced persons situation was necessary. On July 26, 1947, the Senate Judiciary Committee was authorized to make such a study, ultimately to report by March 1, 1950. At the same time, but with a different concern, a group of public-spirited citizens formed the National Committee on Immigration Policy to study postwar immigration, to evaluate the congruity of current policy with the needs and democratic ideals of the United States, and to promote a "more enlightened and scientific approach to the whole question."[6]

Review of National Origins Quotas

The concept of national origins was under review during this period (described in the previous chapter), as was the functioning of other aspects of immigration policy. The large quotas for northern and western European countries went unmet while there were long waits for family members to immigrate from many southern and eastern European countries. As described in the Senate Committee Report, the national origins system "has been denounced as radically biased, statistically incorrect, and a clumsy instrument of selection which bars individuals by discrimination against nations, instead of considering personal qualifications of immigrants. It is said to overlook the innate differences of individuals among members of a group and to confuse racial traits and cultural attainments by identifying both physical and mental developments with country of birth."[7] Even so, the report acknowledged the national origins system "to be generally generally accepted as the best method of allotment . . . the United States can only be an asset to the world if she keeps her institutions intact."[8]

The existing national origins system was neither totally selective nor fully restrictive, and the Committee considered changes in these two policy areas. Between July 1, 1929, when the national origins system went into effect, and the late 1940s, only 27 percent of the existing quota numbers had been used. Even with nonquota admissions, immigration equalled only around 75 percent of the anticipated quota level, and with emigration taken into account, which was unusually high during the 1930s, net immigration averaged only 22,000 per year during that 20-year period. Therefore, even though not fitting the planned mold, the somewhat skewed immigration patterns under the national origins system were seen as having minimal effects on the homogeneity of the U.S. population. Proposals to liberalize the system by making unused quota numbers available to other countries or to force immigration into the desired national origins mold by basing the proportion of quotas available to each country each year on the proportion used by a "key" country such as Great Britain, were rejected. Nevertheless, some quotas were oversubscribed, and no matter how desirable applicants were, there was no way through which they could enter before their turn under the existing system.

Increasing the selectivity of the immigrant admissions process to place more emphasis on the characteristics of the individual immigrants and how these would serve the needs and interests of the United States was also widely favored. Some suggested basing selectivity on the labor-related attributes of prospective immigrants, while others recommended a point system in which many characteristics could be matched with the national interest. Advocates of selective systems such as these believed that they would cut down on waiting lists and oversubscribed quotas by making the demand for visas more congruent with the number of visas available. Several other experts called for an additional preference for skilled workers whose services were needed in the United States. This type of selectivity, it was agreed, would not only provide a means by which some immigrants from oversubscribed countries could enter, it would also directly serve the national interest.

While upholding the validity of the national origins principle, the Committee recognized the need for increasing the selection of immigrants to serve the national interest. Based on this view, the Committee called for the restructuring of the existing preference system to include a first preference for aliens (including their wives and minor children) whose skills were needed in the United States to which up to 30 percent of each quota could be allocated.

This preference eliminated the need for the existing preference admission of agricultural workers and put the needs of the United States in first place, even before the reunion of families. This recommended change, however, was not contrary to the traditional humanitarian goal of family unity in that the husbands of U.S. citizens with first-preference status were given nonquota status to remove the remaining sex bias. Parents of U.S. citizens were to be accorded up to 50 percent of each quota within the second preference, and a third preference was to be allocated--up to 20 percent of each quota--for the entry of spouses (husbands and wives) of permanent resident aliens. Up to 10 percent of each quota was recommended to be allocated to nonpreference immigrants, with up to half of that number to be issued to brothers and sisters of U.S. citizens. They further recommended that the formula for determining quotas be simplified to one-sixth of one percent of the number of inhabitants enumerated in the 1920 Census attributable by national origin to each quota area.

In determining the classes of immigrants to be included in the nonquota category, the Committee considered the recommendation that parents--perhaps limited to those over age 60--be included as a humane consideration and to reduce the backlogs of elderly persons who were then waiting seven to eight years, this alternative was rejected in favor of retaining nonquota status only for the immediate family unit. As already noted, they did recommend including all husbands of U.S. citizens in the nonquota category, regardless of when the marriage took place, thereby relieving some backlogs in Greece, Portugal, Rumania, Spain and Turkey.[9] In the interest of proximity and friendly relations, even though recognized as "a serious problem in view of the general policy of numerical restrictions of immigration under the quota system,"[10] the Committee recommended continuing nonquota status for Western Hemisphere natives.

The 1952 Act--The Continuation of National Origins Quotas

Following the submission of a report by the Senate Judiciary Committee in early 1950, several bills were introduced to modify and codify existing immigration and nationality laws into a single statute, and hearings were held. In the late spring of 1952, the Congress passed legislation which was subsequently vetoed by President Truman, and then passed over the President's veto on June 27, 1952.

The recommendations of the Senate Judiciary Committee on the immigrant admissions system were largely accepted by the Congress in the Immigration and Nationality Act of 1952. The preference system was, however, modified with the first preference for needed skilled workers receiving up to 50--rather than 30--percent of each quota plus any numbers not used in the second and third preferences, and the second preference for parents of adult U.S. citizens receiving 30--rather than 50 percent of each quota plus unused numbers from the first and third preferences. The third preference, allocated the remaining 20 percent of each quota plus any numbers not used for the first two preferences was reserved for the spouses and unmarried minor children of permanent resident aliens. The 1952 Act also provided for a fourth preference, with only unused quota numbers from the first three preferences available to it, for the brothers, sisters, and adult and/or married sons and daughters of U.S. citizens. No more than 25 percent of a quota could be allocated in the fourth preference. Finally, the Act provided for a nonpreference category for all other qualified immigrants, to use numbers not required in the four preferences. Additionally, as well as simplifying the method by which quotas were calculated, the 1952 Act also provided a quota of 100 visa numbers for the colonies and dependencies of independent nations.

The 1952 immigrants admissions system, although retaining much of the 1924 system, made some progressive changes. First, the nonquota category was increased slightly by the addition of husbands of U.S. citizens when the marriage had been recent. Not only did this simplify the law by creating a single category which included the husbands of U.S. citizens, it also removed the sex bias which had existed earlier. Sexual bias was also removed from the old second preference in 1952; it became possible for all permanent resident aliens, regardless of sex, to bring their spouses and minor children under the new third preference. The 1952 Act further specified additional relatives of citizens to whom priority should be given if quota numbers were available. Although brothers and sisters and adult and/or married sons and daughters were potentially eligible for nonpreference visas under the 1924 Act, they were not given special mention. Although in a sense still nonpreference immigrants because a block of quota numbers was not specifically allocated to the fourth preference and thus their use of numbers was limited, these relatives were nevertheless ahead of all other nonpreference immigrants.* Perhaps most significant, however, among the changes made in

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*In 1959 the preference structure was changed slightly to further facilitate the immigration of close relatives of U.S. citizens and permanent resident aliens. Unmarried adult sons and daughters of U.S. citizens were moved from fourth to second preference, and the third preference was enlarged to include the unmarried adult sons and daughters of permanent resident aliens, who previously had to compete with all other nonpreference applicants in that category.

1952, was the setting aside of at least up to half and potentially more of all quota numbers for skilled workers who were needed in the United States. This alteration reflected the desire to be more selective in allocating quota numbers within the framework of the national origins system.

Although retaining the national origins quota system, the 1952 Act abolished all racial bars to immigration and naturalization, a process which had already been initiated by special legislation during the preceding two decades. However, to control the number of Asians immigrating annually, an "Asia-Pacific Triangle" with a quota of 2,000 was created to cover most of the Asian continent from India to Japan and the Pacific Islands. Persons of races attributable to the Asia-Pacific Triangle were charged to its quota, regardless of where they were born, thus retaining an element of racial quotas in a system otherwise based on country of birth.

Although it made some progressive changes, the new immigrant admissions system was heavily opposed. The National Committee on Immigration Policy which had studied U.S. immigration policy concurrently with the Senate Judiciary Committee recommended strongly in its 1950 report that the national origins quota system be abandoned as a selection mechanism for immigrants. It found no economic, demographic, or social rationale for continuing the national origins policy and further cited that such a policy was detrimental to the national interest in these areas and anathema to our traditional democratic ideals. Their recommendations in this area were sixfold:

- The number of immigrants admitted should be increased, perhaps doubled, from the existing level of approximately 150,000;
- A pool of unused quota numbers should be created for use by countries with oversubscribed quotas or to meet refugee situations;
- A system of occupational preferences should be created, based on U.S. needs;
- All vestiges of racial discrimination should be removed from immigration policy;
- The United States should consult with international migration agencies to make U.S. policy more consistent with U.S. international responsibilities; and
- An Immigration Commission, comprised of members of both houses of Congress, should develop a "democratic alternative" to the existing quota system.

Further, President Truman had vetoed the legislation ultimately passed because of its continuation of the national origins principle as a means of allocating immigrant visas. He soon appointed a Commission "'to study and evaluate the immigration and naturalization policies of the United States' and to make recommendations 'for such legislative, administrative, or other action as in its opinion may be desirable in the interest of the economy, security, and responsibilities of this country.'"[12]

The Truman Commission, in its review of U.S. immigration policy, reached a consensus that the national origins quota system should be abolished and that there should be an overall annual limit on immigration to the United States based on U.S. needs and capacity for absorption, a level then projected to be around 250,000. The Commission further called for specific allocations within the annual total to meet refugee-type situations, and the needs of the United States.[13]

Soon after taking office in 1953, President Eisenhower requested in his State of the Union message that Congress "review immigration legislation and 'enact a statute which will at one and the same time guard our legitimate national interests and be faithful to our basic ideas of freedom and fairness to all.'"[14] Action specific to the quota system was not passed, however. In 1956 Eisenhower again recommended to Congress that it make a complete study of the quota system and, as an interim measure, recommended basing the quota system on the 1950 Census which would increase the annual limit to roughly 220,000. He further suggested a system for redistributing unused quota numbers to preference immigrants.[15] In 1957 and 1960 President Eisenhower again requested that Congress make changes in the national origins system and also asked for action permitting the entry of refugees.

In the summer of 1963 President Kennedy continued the efforts of his predecessors to abolish the national origins quota system and proposed legislation to this end. Providing for a five-year transition period during which increasing numbers would be released from the quotas to be used by oversubscribed preference immigrants, the legislation also proposed special consideration for refugees within the immigrant admissions system, abolition of the Asia-Pacific Triangle and numerically exempt status for the parents of U.S. citizens along with the already nonquota Western Hemisphere natives. President Johnson, in his 1964 State of the Union message, also called for the end of discrimination in U.S. immigration policy, especially as it related to family reunification and persons with skills needed in the United States.

Although several more liberal bills were introduced in Congress following enactment of the 1952 Act, most died in Committee. For a decade following passage of the Immigration and Nationality Act of 1952 the Congress did not take a comprehensive look at immigrant admissions policy; instead it took piecemeal action when specific pressures necessitated it. During this period, relevant legislation was passed several times with two basic purposes--to admit refugees or to admit specific groups of immigrants when the number of backlogged applicants due to oversubscribed quotas grew too large. Clearly such legislation--passed about a dozen times--further removed the national origins quota policy from its stated purpose and further demonstrated its ineffectiveness as a means of adequately providing for the entry of immigrants to the United States.

Between 1953 and 1965, only 35 percent of all immigrants admitted to the United States were quota immigrants. Four-fifths of the nonquota admissions during that period were nonquota immediate relatives of U.S. citizens or natives of Western Hemisphere countries. Over 300,000 refugees from Europe and Asia--almost exclusively from low-quota countries--were also brought to the United States outside of the quotas. In addition, the entry of thousands of immigrants who were eligible for and had applied for quota visas were admitted through special legislation as nonquota immigrants because their category and country quotas were so oversubscribed that the date of their entry was in the distant future. Even with these measures, however, the prospects of immigrating within a reasonable period--and in some cases, even a lifetime--were dim for persons from many countries. Third-preference numbers were backed up for about ten years for applicants from countries such as Greece, Italy, Portugal and the Philippines; fourth preference and nonpreference visas were unavailable to nationals of those countries. On the other hand, as had largely been the situation since 1924, all nationals from northern and western European countries who wished to immigrate were able to do so, with large portions of their country quotas still unused. Overall, during the 13-year period, only 61 percent of the available quota numbers were used; yet thousands of qualified persons were required to wait because they were born in the "wrong" country.

Toward an Equitable Standard

The Administration Bill proposed by President Kennedy in 1963 and endorsed by President Johnson was the first real advance in reshaping the immigrant admissions system. Hearings on amendments to the Immigration and Nationality Act were held in 1964 and 1965, and following its review the Congress concluded that the national origins provisions should be replaced by a "highly selective system for the admission of immigrants."[16] Recognizing the deviation of actual immigration patterns from those contemplated under the national origins system, in part a result of the enactment of special legislation to deal with specific problems with which the 1952 Act was to inflexible to cope, the proposed system, was held to be "fair, rational, humane, and in the national interest." Family reunification was to be accorded top priority, with preference given in descending order of the closeness of relationship. Preference was also to be given to qualified immigrants in occupations beneficial to U.S. economic and cultural interests.

The stated objective of the proposed legislation was "to choose fairly among the applicants for admission to this country without proposing any substantial change in authorized immigration." 18 The proposed numerical ceiling was, therefore, set at 170,000, based on the existing quota of 158,561, plus 10,200 numbers to be set aside for "conditional entrant" refugees under the new law, and a negligible increase of 1,239. This level was "believed to be" within the present absorptive capacity of the United States. As under the quota systems, certain specified groups of immigrants were to be admitted outside the 170,000 ceiling. Chief among these groups were the spouses and children of U.S. citizens, a newly exempt category for parents of adult U.S. citizens who previously had been second preference--and natives of the Western Hemisphere until July 1, 1968, pending further study by a special commission.

The provisions of the 1965 amendments to the Immigration and Nationality Act, enacted October 3, 1965, for the first time in almost half a decade based immigrant admissions on a more equitable standard. Although still based on country of birth, the 1965 amendments provided that within the established system of preferences, immigrants would be admitted on a first-come, first-served basis, with an annual limit of 20,000 on visas to be issued to persons born in any one country. This provision ended the different treatment of Asians, who even under the 1952 Act as amended, were charged to the quota of their country of ancestry rather than their place of birth. While preventing the unreasonable allocation of visa numbers to any one country, the 20,000 limit, in theory, set all Eastern Hemisphere-born immigrants on an equal footing as far as their ability to immigrate to the United States. Separate ceilings of 200 visa numbers were established for the colonies and dependencies of independent nations, however.

The new law also provided for the following system of seven preferences and a nonpreference category to further select among qualified applicants for immigrant visas. Each preference was allotted a specified percentage of the 170,000 annual immigrant visas available. These percentages were based largely on the demand for each group by relatives or employers in the United States.

First preference --Unmarried sons and daughters of U.S. citizens (20%)

Second preference --Spouses and unmarried sons and daughters of permanent resident aliens (20%*)

Third preference --Members of the professions, scientists and artists (10%)

Fourth preference --Married sons and daughters of U.S. citizens (10%*)

Fifth preference --Brothers and sisters of U.S. citizens (24%*)

Sixth preference --Skilled or unskilled workers needed in the United States (10%)

Seventh preference --Conditional entrants (refugees) fleeing communism or an area of the Middle East (6%)

Nonpreference --Other qualified immigrants as visa numbers are not required for applicants in the seven preferences.(*)

These preferences, other than the seventh for refugees, were not dramatically different from those already in effect. Parents of U.S. citizens were accorded immediate relative status by the 1965 Act and therefore were removed from the preference system. Family reunification was facilitated by the reordering of preferences and the higher percentage of visa numbers specifically allocated to the family reunification preferences--80 versus 50 percent under the 1952 Act. Certain groups--especially brothers and sisters of U.S. citizens--especially gained by the changes. Accorded only a limited number of unused quota numbers under the 1952 Act, this group was accorded the largest percentage among the preferences under the 1965 Act--24 percent of the 170,000 annual total. This large number of visas was somewhat reflective of the long backlogs which had developed--especially in Italy--under the old system. In part because of its underutilization, the old first preference for needed skilled workers was reduced in size and divided into two preferences--the third and sixth--although at least in theory unskilled workers were also admissible within the sixth preference. Aside from reducing the priority and numbers available for skilled workers, the 1965 Act further restricted the entry of nonrelatives by strengthening the wording of the applicable ground for exclusion for immigrant workers, the labor certification process.

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*Plus any unused numbers from higher preferences.

The 1952 Immigration and Nationality Act had provided that immigrants not entering in the relative preferences were excludable _if_ the Secretary of Labor determined that there were sufficient able, willing, qualified and available workers, or if their employment would adversely affect wages and working conditions of similarly employed persons in the United States. Under this "negative labor certification" procedure, the burden was on the Department of Labor to act retroactively. Individual labor certification was applied to the relatively little-utilized first preference and beginning in 1953 to Mexican workers. In the case of nonpreference applicants and Western Hemisphere immigrants--who were numerically exempt and not selected by a preference system--if a consul noticed an employer recruiting more than 25 employees for a single area in a given year, the Department of Labor would look more closely at the concerned labor-market situation. Department of Labor actions under this procedure were few, however. The first exclusion under the procedure was not made until 1957, and over the 13-year period from 1952 to 1965, only 56 certifications were issued.

Organized labor argued in favor of putting the Department of Labor in an active role in the immigrant admissions decision process rather than in a reactive role, and succeeded in getting the wording of the labor certification procedure reversed from the previous law. Under the amendments, an alien was excludable unless the Secretary of Labor determined there were not sufficient workers rather than if he/she determined there were sufficient workers. As prior to the amendments, occupational preference applicants for immigrant visas, other than those exempted by regulation, were required to get individual labor certifications. In addition, nonpreference and Western Hemisphere immigrants were required to obtain individual labor certification following the 1965 changes in the law.

Although the 1965 amendments became effective on December 1, 1965, the new immigrant admissions system did not go fully into effect until July 1, 1968. During the transition phase, an interim immigrant admissions system was in effect. The new preference system was put into place, but visa numbers continued to be allocated under the national origins quota system. However, in contrast to the earlier procedure under which unused quota numbers were lost, during the transition period an immigration pool was created in which unused quota numbers from one year were recaptured for use in the next year by preference immigrants in countries with oversubscribed quotas and long preference backlogs. Through this system, existing quota numbers could be used more fully and backlogs reduced if not eliminated before the new immigrant admissions system went fully into effect in mid-1968. Over the 2 1/2 year period during which the immigration pool was in effect, more than 208,000 quota numbers were used by oversubscribed country and preference applicants, with three-quarters of these numbers being issued to natives of Greece, Italy, Portugal, China and the Philippines. In part because the numerical limit of 170,000 under the 1965 Act, unlike the total quota under the 1952 Act, could easily be met under the new visa allocation system, annual immigration increased by roughly 100,000 over the next decade.

As noted earlier, the 1965 Act also provided for the imposition of an annual numerical ceiling of 120,000 on immigration from the Western Hemisphere, pending study over the 2 1/2 year interim period before the proposed effective date of July 1, 1968. When the 1965 changes in the law were being considered, immigration from the Western Hemisphere was increasing. Unlike earlier policymakers, who had seen immigration between the United States and her Western Hemisphere neighbors as uncontrollable on the one hand and as a sign of good neighbor policy on the other, the framers of the 1965

Act believed that the earlier policy was inconsistent with the elimination of place of birth as a factor in immigration policy, especially since it conveyed a preferred status to Western Hemisphere-born immigrants.

In its report, issued January 1968, the Select Commission on Western Hemisphere Immigration recommended that the effective date of the ceiling on Western Hemisphere immigration be postponed for one year to permit further study.[19] An analysis of the scant data then available on admissions from Western Hemisphere countries had indicated that the new labor certification requirements placed on immigrants from these nations--exclusive of certain immediate relatives of U.S. citizens and permanent resident aliens--was having the desired effect of reducing and controlling immigration without an imposed numerical ceiling. With additional data and time for study, the Commission was hopeful that it would be possible to prevent the imposition of a numerical ceiling by selective criteria and thus continue the image of the United States as an equal and open partner among nations in the Western Hemisphere.

However, in the event that a numerical ceiling was imposed, the Western Hemisphere Commission further recommended that a 40,000 per-country ceiling be instituted to prevent the total dominance of Western Hemisphere immigration by one or two countries. They believed this limit would still recognize the traditional relationship the United States has had with sister republics by imposing a limit larger than the 20,000 per-country ceiling in effect in the Eastern Hemisphere and which would accommodate existing levels of immigration from Mexico and Canada. The Commission further recommended that Cuban refugees be allowed to adjust status outside of any numerical ceilings because of the delay that including such refugees would impose on all other immigrants from the Western Hemisphere.

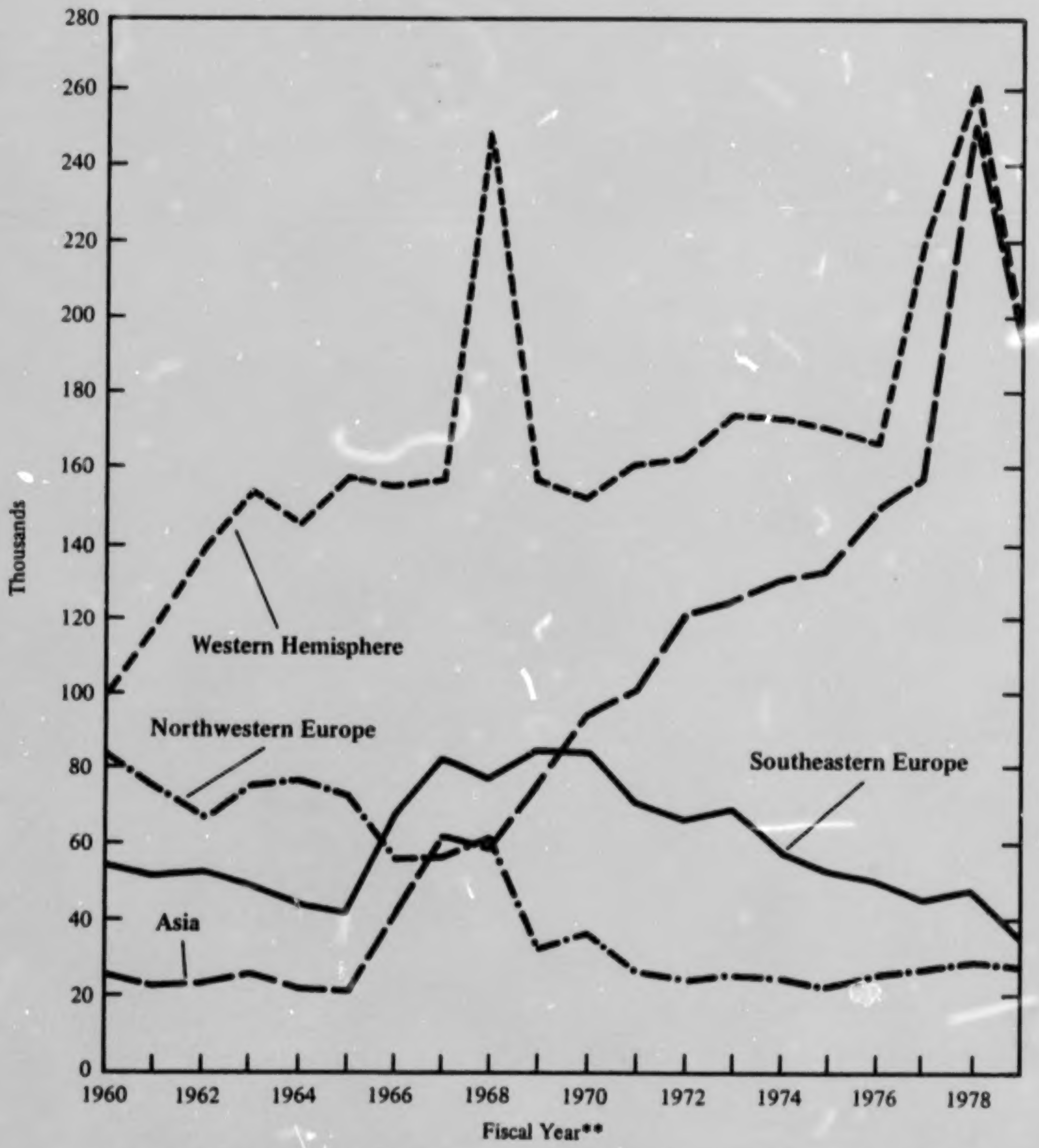
Despite the recommendations of the Select Commission on Western Hemisphere Immigration, action was not taken by the Congress, and beginning with fiscal year 1969, Western Hemisphere immigrants became subject to a 120,000 annual numerical ceiling. Visas were issued on a first-come, first-served basis, without a preference system or per-country ceilings. As in the Eastern Hemisphere however, immediate relatives of U.S. citizens remained numerically exempt.

Another provision exempted the parents, spouses and minor children of permanent resident aliens and the parents of minor U.S. citizens from the labor certification provision, which was to be the controlling factor for Western Hemisphere immigration. These exemptions enabled close relatives to get in line for visas with labor-certified applicants by only demonstrating that they were not excludable.

Impacts of the 1965 Legislation

Even with the nonquota admission of immediate relatives of U.S. citizens, refugees and immigrants admitted through special legislation, immigration to the United States prior to the 1965 changes in the law was predominately from Europe, and within that continent, largely from northern and western European countries. Following enactment of the 1965 amendments to the Immigration and Nationality Act, however, this pattern reversed. Immigration from southern and eastern European and Asian countries increased dramatically, while that from the traditional European immigrant-sending countries declined, as is shown in the chart on the next page.

IMMIGRATION FROM MAJOR SENDING AREAS*
1960-1979



SOURCE: Based on Table 14, Annual Reports, Immigration and Naturalization Service, and unpublished data.
*By area of birth.
**Fiscal years 1960-1976 were from July 1 - June 30; fiscal years 1977-1979 were from October 1 - September 30.

This change in patterns reflected the large quotas and absence of backlogs in northern and western European countries under the 1952 Act, and the low quotas and huge backlogs in southern and eastern European and Asian countries. Since the 1965 Act worked on a first-come, first-served basis, visas were allocated first to those in the backlogs--applicants from the countries of new immigration. Also reducing immigration from northern and western European countries was the new, more stringent labor-certification procedure which had not affected the largely nonpreference entry of northern and western European immigrants prior to the 1965 changes. While it had once been easy for natives of countries with large quotas to immigrate to the United States without family ties or skills needed in the United States, that was no longer the case after 1965.

The large number of southern and eastern European immigrants entering the United States after 1965 tended to join U.S. citizen relatives who had immigrated earlier in relatively small but steady numbers under the 1924 or 1952 Acts. The greatest demand, was, therefore, in the lower preferences. Asian immigrants, however, had a much smaller population base in the United States and at least initially relied more heavily on more recent or nonrelative ties to the United States, thus coming more often to join a permanent resident--rather than a citizen--spouse or parent through the second preference, or as a needed professional worker in the third preference. In fact, because of the greatly disproportionate demand in some Asian nations, the Philippines, China, India, and Korea tended to use most if not all of their possible numbers in these two preferences, thus leaving few second and third preference numbers for prospective immigrants from other countries.[20]

As greater numbers of Asians--and to some extent, southern and eastern Euopeans--immigrated and naturalized at relatively high rates, the number and proportion of immediate relatives of U.S. citizens from these same areas also increased as did demand in some of the preferences, especially the second and fifth. In the case of immediate relatives, these patterns had the effect of increasing overall immigration, and, in the case of preference immigrants, of increasing the backlogs and length of time applicants had to wait for their visas.

The 1965 amendments also had an effect on immigration from the Western Hemisphere. Even before the 120,000 numerical ceiling was placed on the immigration of Western Hemisphere natives, immigration dropped by 30 percent in 1966 because of the new, more stringent labor certification requirements. This effect was short-lived, however, as the labor certification process did not effectively regulate Western Hemisphere immigration. Although in 1969 most Western Hemisphere immigrants, other than statutorily exempt Cuban refugees, were labor-certified entrants or accompanying family members, only 5 percent were labor certified by 1976. At least 80 percent of these 1976 entrants were statutorily exempt from labor certification because of the requisite family ties to U.S. citizens or permanent resident aliens.[21]

Due to a variety of factors, such as newly independent countries in the Western Hemisphere, provision for the adjustment of status of paroled Cuban refugees, and economic and political difficulties in some Western Hemisphere nations, immigration and demand to immigrate from the Western Hemisphere increased following the 1965 changes in the law. Within a year all applicants under the 120,000 numerical limitation had to wait for nine months to obtain an immigrant visa. By the end of the second and third years the wait increased to 14 and 15 months, respectively, and soon thereafter jumped to a wait of over two years. This meant that in the Western Hemisphere spouses and children of permanent resident aliens, other labor certification-exempt relatives and labor certified immigrants all waited together in a single list for lengthy periods of time to immigrate. In the Eastern Hemisphere, however, immigrants were admitted within preference categories, under which close relatives of persons in the United States were generally admitted expeditiously.

The Next Step--Parallel Hemispheric Systems

With the passage of time it became increasingly clear that the United States was operating under two distinct immigrant admissions systems. That for the Eastern Hemisphere included a total numerical ceiling, a preference system and per-country limits, where the system for the Western Hemisphere involved little more than a total numerical ceiling and a modicum of selectivity based on requirement of or exemption from labor certification. One was predicated largely on family reunification and the other, in theory, on U.S. labor market needs. In the Eastern Hemisphere, the 22-year old British daughter of a U.S. citizen and a Spanish spouse of a permanent resident alien would have been able to immigrate without delay under the preference system, but Western Hemisphere-born visa applicants in the same situation would have to have gone to the end of the line of all Western Hemisphere applicants and then waited for over two years. The 22-year old daughter born in the Western Hemisphere would, in fact, have had to obtain a labor certification to get in line, because her close relationship to a U.S. citizen--although it would have given her first preference standing in the Eastern Hemisphere--was insufficient to qualify her for immigration status in the Western Hemisphere.

This situation was recognized by the Congress as early as 1968, and hearings were held. Over the next several years, there were intermittent legislative proposals to extend the preference system and per-country ceilings to the Western Hemisphere. During hearings of the House Judiciary Subcommittee on Immigration, Citizenship, and International Law in 1973 it was stated:

> It should be remembered that, with the abolition of the national quota system in 1965, Congress endorsed the principles of equity and family reunification as the basis of our immigration policy for the Eastern Hemisphere. It remains the unfinished business, therefore, of this subcommittee and the Congress to extend these principles to the natives of the Western Hemisphere.[22]

In addition, the Department of State was concerned about impact of the existing policy on foreign relations with other Western Hemisphere nations, especially Canada from which immigration had dropped precipitously--from over 38,000 in 1965 to barely 7,000 in 1975. Immigration from other Western Hemisphere countries had also suffered due to the provisions of the new system and as Mexico increasingly had used a larger portion of the 120,000 available numbers.

After consideration of several bills, immigration legislation was passed on October 20, 1976. Effective on January 1, 1977, it imposed the preference system and per-country ceilings on Western Hemisphere immigration, thereby creating two essentially equal immigration systems, based on the existing 170,000 and 120,000 hemispheric ceilings.

At this time two minor modifications were also made in the existing preference system. In view of the current U.S. labor-market situation, the third preference was modified to require a job offer from a U.S. employer, which was already the case for sixth preference immigrants. The fifth preference was amended slightly to require petitioning U.S. citizens to be at least 21 years of age, which made this provision consistent with that for parents of U.S. citizens.

Serious consideration was given to increasing the per-country ceiling to 35,000 for contiguous countries within the 120,000 Western Hemisphere ceiling because of the large number of visas then used by Mexico, and the similarly large number used by Canada prior to the enactment of the 1965 amendments. However, as summarized in a joint statement to the House Judiciary Committee,

> Based on a review of existing data, a uniform ceiling for each country . . . would be preferable. This would permit an equitable distribution for immigration from throughout the hemisphere and from throughout the world. Problems with illegal immigration will exist whether immigration from Mexico is limited to 20,000 or 35,000 per year or not at all. While permitting 35,000 immigrants a year from Mexico would ease their demand slightly, this would only increase the waiting lists and the demand throughout the rest of the hemisphere.[23]

Therefore, in the interest of avoiding unequal treatment for any nationality, whether based on national origins or geographic proximity, the concept of a special relationship was rejected in favor of a policy under which all countries received equal treatment, and the 20,000 per-country limit was used for both hemispheres. Cuban refugees who had been paroled into the United States and were allowed to adjust, however, were given numerically exempt status under the law thus freeing up sizeable numbers of visas for other countries.* Although increased from 200 to 600, the separate limit for colonies and dependencies was retained by the 1976 amendments.

Another problem, which had developed over the decade in which the 1965 amendments had been in effect, was also addressed by the 1976 amendments--the problem of uneven demand among preferences and countries for immigrant visas. For instance, demand for second- and third-preference visas was so high in the Philippines that there were frequently long waits for Filipinos to get visas in those preferences and no hope of visa issuance in lower preferences--lower preferences visa numbers were simply unavailable. Additionally, the heavy use of second- and third-preference visas by Filipino nationals meant there were relatively few numbers in those preferences left for use by other countries. It was anticipated that similar problems might also develop in the Western Hemisphere.

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*As well as making additional numbers available in the future, the 145,000 visa numbers erroneously used for Cuban adjustment cases between July 1968 and late 1976 were restored (Silva vs. Levi) for use by Western Hemisphere applicants who were not able to enter during that period because of this practice.

To alleviate this problem, a new provision was added to the law which called for a special system of visa allocation among preferences for those countries that reached the 20,000 limit. For such countries, in the year following one in which the 20,000 limit was met, visas would be allocated strictly according to the percentage assigned to each preference. Under this method, up to 20,000 visas would be made available--in some cases for the first time in years--to applicants in all preference categories; far fewer than normal visas would be available for applicants in the high demand preferences, however. Such a system, it was believed, would nevertheless eliminate many of the inequities that resulted from uneven patterns of demand, both within the countries especially concerned and for all other countries within the applicable hemisphere.

Impacts of the 1976 Legislation

Numerically limited immigration from Mexico had been running around 40,000 per year prior to the imposition of per-country ceilings of 20,000, effective January 1, 1977. Although unfortunate, the fact that visa numbers available to Mexico would be reduced substantially was well known prior to passage of the 1976 amendments. However, this effect was unavoidable if immigration was to be based on equality among all nations rather than special treatment for some nations. Immigration from other Western Hemisphere countries was facilitated by the changes in policy, both through the 40,000 to 50,000 additional visa numbers made available by reduced Mexican immigration and the new, numerically exempt status for Cuban refugee adjustments. For instance, numerically limited Canadian immigration had dropped to the all-time low of 3,500 by 1976, but rose to 10,600 by 1978. Immigration from most other Western Hemisphere countries also increased substantially.

Although much of the increase in immigration from most Western Hemisphere countries can be attributed to the greater availability of visa numbers, the change in the immigrant selection system must also be considered as a factor. Many persons who previously had been given an advantage--such as the parents of minor U.S. citizens or permanent resident aliens who were exempted from labor certification--were no longer eligible to immigrate unless they had other requisite family ties or certifiable skills.

One interesting side effect, possibly resulting from the elimination of immigration benefits for parents of minor U.S. citizen children, is the drop in births to nonresidents of the United States in southern border states--where most such births occured after 1976. Such births have dropped by 50 percent since that time. This decrease may possibly indicate that since it now takes 21 years to accrue a benefit from a U.S. citizen child, persons who would have entered the United States for the purpose of giving birth no longer do so. Others--such as the adult sons and daughters, married or unmarried, and brothers and sisters of U.S. citizens--were given preference status whereas earlier they had been ineligible, unlike their Eastern Hemisphere counterparts, for immigrant status based on their close familial ties.

The provision enacted in 1976 allocating visas among all preferences in countries using the 20,000 limit was generally effective, as is shown in the following table for the Philippines comparing visa usage under the earlier and new systems. However, certain problems arose. Due to demand within the seven preferences by mid- to late 1978, nonpreference numbers became scarce and then virtually unavailable.

Filipino Immigrants Admitted by Preference
Fiscal years 1967-76, 1977, 1978

Preference	Allocation of visas	1967-76	1977	1978
First	(20%)	3,348	424	435
Second	(20%)*	69,432	16,140	7,870
Third	(10%)	85,429	3,477	2,131
Fourth	(10%)	6,508	4	1,885
Firth	(24%)	9,578	113	4,613
Sixth	(10%)	1,855	8	1,476
Seventh	(6%)	4	1	--
Nonpreference*		295	30	721
Total preferences		176,449	20,197	19,131

SOURCE: Immigration and Naturalization service, unpublished data.

*Plus fall-down of unused numbers from higher categories.

This meant that to remain under the new visa allocation procedure, countries using 20,000 visas per year would have to use all 20,000 numbers within the preferences. For some countries this was virtually impossible. Their natives did not meet the requirements for conditional entry in the seventh preference and as a result the 20,000 limit could not be reached. Therefore, in the following year, the special provision did not apply, and visas were issued on a first-come, first-served basis, working down the preferences. Under this system, it was likely that the 20,000 limit would be met, resulting in a return to the special allocation procedure in the following year, and so on. This "flip-flop" of visa usage within certain high-demand countries was likely to create strange patterns of immigration over time, not only within the countries just noted, but also within other countries whose visa usage relied on visas remaining from high-demand countries.

Equality and the Search for a Better Policy

Through its creation of a single worldwide ceiling on immigration in place of two separate hemispheric ceilings on October 5, 1978, the Congress believed that it had completed the evolution of equality in U.S. immigration law begun by the 1965 amendments to the 1952 Immigration and Nationality Act. Indeed the creation of a 290,000 ceiling did, as intended, eliminate differential treatment between the hemispheres and allow fuller and more equitable usage of preference numbers.

Under the separate hemisphere system, demand under particular preference categories was unequal, but provisions did not exist for sharing or trading visa numbers between hemispheres. This situation was most vivid in the seventh preference category for conditional entrants. Although there was heavy demand for the seventh preference in the Eastern Hemisphere, there was virtually no demand within the Western Hemisphere for this status. Under the strict ideological definition for conditional-entry status, only Cubans--who were unable to leave Cuba at that time--qualified in the Western Hemisphere, thus leaving a sizeable block of numbers unused. The creation of a worldwide ceiling eliminated this problem. It was further noted, however, that more comprehensive refugee reforms were needed and would be forthcoming.

The 1978 legislation also created a Select Commission on Immigration and Refugee Policy. Concerning the creation of the Select Commission, the House Judiciary Committee stated:

> The committee believes that it is appropriate that the law establishing a worldwide ceiling, and thus completing the process of immigration law reform which began with the enactment of the 1975 amendments should also create a Select Commission to study immigration law and policy. The purpose of the Commission is to help pave the way for future development in immigration and refugee law and policy in order to meet the specific needs of our time and of the time to come.[24]

The Judiciary Committee, in recommending the creation of the Select Commission, also noted "that the two major revisions and recodifications of our immigration law were preceded by comprehensive studies."[25] by the Dillingham Commission which published its findings in a 41-volume work and the 1947 Senate Judiciary Special Subcommittee to investigate immigration and naturalization. Aside from recognizing that the basics of the present statute were a quarter of a century old and in places obsolete or overly complex, the House Judiciary Committee also cited recent recommendations by the President's Domestic Council, Committee on Illegal Aliens and the General Accounting Office, among others, that recommend a comprehensive look at U.S. immigration law and policy.

Footnotes

1. U.S. Congress, House, *House Report No. 95-1206*, May 18, 1978, 95th Cong., 2d sess., pp. 7-8.

2. U.S., Congress, Senate, *Senate Report No. 1515*, April 20, 1950, 81st Con., 2d sess., p. 443.

3. Helen F. Eckerson, "Immigrants and National Origins," *Monthly Review* 3 (October 1945): 213.

4. James J. Davis, *Selective Immigration* (St. Paul: Scott-Mitchell Publishing Co., 1925), p.207.

5. Helen F. Eckerson, "Nonquota Immigration, Fiscal Years 1925-1944," *Monthly Review* 3 (August 1945): 185.

6. William S. Bernard, *American Immigration Policy: A Reappraisal* (New York: Harper and Brothers, 1950), p. xviii.

7. U.S., Congress, Senate, *Senate Report No. 1515*, pp. 64-65.

8. Ibid., p. 65.

9. Ibid., p. 465.

10. Ibid., p. 472.

11. Bernard, *American Immigration Policy*, p. 275.

12. President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington, D.C.: U.S. Government Printing Office, 1953), p .xi.

13. Ibid., p. 13.

14. Elizabeth J. Harper, *Immigration Laws of the United States* (Indianapolis: Bobbs-Merrill Co., 1975), p. 24. Quote in *Congressional Record*, February 2, 1953, p. 752.

15. Harper, *Immigration Laws*, p. 26.

16. U.S., Congress, Senate, *Senate Report No. 748*, September 15, 1965, 89th Cong., 1st sess.

17. *U.S. Congressional and Administrative News* 209 (1965): 3302.

18. Ibid. Report cited on p. 3330.

19. Select Commission on Western Hemisphere Immigration, Report (Washington, D.C.: U.S. Government Printing Office, 1968), p. 9.

20. U.S. Departments of Justice, Labor, and State, Interagency Taskforce on Immigration Policy, Staff Report (Washington, D.C.: U.S. Department of Justice, March 1979), pp. 192-93

21. Ibid., p. 164.

22. U.S., Congress, House, House Report No. 94-1553, September 15, 1976, 94th Cong., 2nd sess. pp. 4-5

23. U.S., Congress, House, Committee on the Judiciary, Hearings before the Subcommittee on Immigration, Citizenship, and International Law, 94th Cong., 2d sess. (Washington, D.C.: U.S. Government Printing Office, 1976), pp. 362-63.

24. U.S., Congress, House, House Report No. 95-1205, pp. 7-8.

25. Ibid., p.7.

CHAPTER VIII: THE FUTURE OF THE U.S. IMMIGRATION SYSTEM*

Although the current immigration law is far more equitable than its predecessors, the process through which immigrants are admitted to the United States has never been totally revamped since its inception over half a century ago. Current policy has evolved considerably as inequities and problems have been alleviated in earlier laws, but the basic blueprint itself--a numerical limit on immigration, a preference system combining family and worker priorities, some sort of limit on the number of immigrants admissible from any one country, and exemption of certain groups of immediate relatives and "special" immigrants from these limits--remains essentially the same.

Letters to the Commission and prepared and open-mike testimony at public hearings clearly demonstrated that there was considerable dissatisfaction with the present immigrant admissions system. To some extent, most persons blamed at least some of the current undocumented/illegal alien situation on the failure of the legal admissions system to accommodate certain groups of immigrants as well as on insufficient enforcement. Others cited the long backlogs; the lack of preference for certain close relatives of U.S. citizens and permanent resident aliens; restrictive country, dependency and worldwide numerical ceilings; and the lack of clearly stated goals as major problems of the existing system. Although most critics of the current policy called for an opening up of the immigrant admissions system, there was also some sentiment for reducing the number of immigrants admitted annually and for being more restrictive in selection criteria.

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*Lisa Smith Roney, principal author.

Included in numerous letters to and testimony before the Select Commission were statements on U.S. immigration policy such as these:*

> The Select Commission may decide that the current policy is the best one for the future development of the U.S. but it should first consider alternative policies.
> --Letter from Robert Finn, American Vice Consul, Istanbul, Turkey

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*Letters to the Select Commission and transcripts of the Commission's Hearings are in the papers of Select Commission on Immigration and Refugee Policy, National Archives.

> Why does our system make it so difficult for thousands of potentially productive citizens to enter this country while admitting thousands who will undoubtedly be a burden on the state? I do not question the humane acceptance of refugees rejected from their homelands. I do question a policy which provides unequal treatment of those who are neither newsworthy nor carry any special political appeal.
>
> --Letter from Frank Lumsden, Daly City, California.

> We, as well as others in our position as aliens, hope that the process of immigration can be made more expeditious. The anguish of this long wait is difficult to understand by those who have never had their beliefs and security so severely challenged.
>
> --Letter from Gonzalo and Isabel Garreton, Kettering, Ohio.

> I am not surprised at the number of illegal aliens coming up from Mexico, when I know how much easier it would be to lie at the border than to tell the truth and be subjected to a barrage of paper and regulations.
>
> --Letter from Suzanne Crotty, Healdsburg, California.

Parallel to the public opinion gathering aspect of the Select Commission's work, the Commission staff conducted its own investigations and came to some of the same conclusions. Although the staff found the factors leading to illegal migration to be numerous, the failure of the present system to bring some immediate relatives expeditiously to join their permanent resident spouses or parents in the United States, or to provide an immigration channel for persons without close family ties here or specific skills were among the contributing factors to the current problems.

Preliminary analysis indicated that among the deficiencies of the current system for admitting immigrants was the lack of clearly stated goals or objectives to be served by immigration policy, and that to the extent that there are unstated goals, they are frustrated frequently by the policy itself. Backlogs for some groups from certain countries mean waits of over a decade, while lower-preference immigrants from other countries enter without delay. Further, the staff found that prior to passage of the Refugee Act of 1980, the current law was little better than its predecessors at handling major refugee situations.

Pursuant to the decisions of the Select Commission, the staff believes that it is possible to develop a system for admitting immigrants which would alleviate many of the problems of the current system, serve clear goals, be more equitable and perhaps be more easily understood and administered. Developing such a system involves determining the objectives of immigration policy, creating a new model for an immigrant admissions system to serve these goals and determining parameters for the number of immigrants to be admitted under the new system. The Select Commission accomplished these ends, as reported in its recommendations to the Congress and the President on March 1, 1981.

Goals of U.S. Immigration Policy

> My observation and information add up to a big plea to set our immigration policies on a high plane, recognizing the rights of all of us to earn a living, be with our families, be treated equitably and with courtesy.
> --Letter from Louise Wilson, Palo Alto, California
>
> Reunification of the family, which is one of the better policies of the law has been disregarded, if not defeated.
> --Zacarius Manigbas, Director of the Congress of Philippine-American Citizens, New York Hearing.
>
> Given the fact that we will never be able to accept all who wish to come, priorities are necessary. . . . Because we establish these priorities, we must truly determine what is America's capacity to absorb and maintain a policy of equality and fairness to all.
> --Aloyius Mazewski, President of the Polish American Congress and Polish National Alliance, Chicago Hearing.

Paramount to all other considerations, the Commission made it clear that immigration policy should serve the national interest. Although the United States has a long tradition as an immigrant-receiving nation, it should only remain so to the extent that the admission of immigrants is in our economic, social and cultural interests. Demand to immigrate to the United States today is so great that it would not be in the national interest to admit all who wish to come. Therefore, some method of determining which groups or categories of immigrants are in our best national interest is necessary.

Traditionally, persons migrating to the United States, whether legally or illegally, have come for one or a combination of three broad purposes--to join family members already here, to better themselves economically or to escape persecution. Over the years, immigration law, in varying degrees, has provided for and encouraged the entry of such persons as family members, workers and refugees. The staff believes that it is in the best national interest for immigration policy to explicitly serve the goals of family reunification, economic growth consistent with protection of U.S. workers and cultural diversity consistent with national unity. It also believes that the United States should remain a champion of freedom from oppression through its refugee admissions policy.

The reunification of families should remain one of the foremost goals of immigration not only because it is a humane policy, but because bringing families back together contributes to the economic and social welfare of the United States. Society benefits from the reunification of immediate families, especially because family unity promotes the stability, health and productivity of family members. Family reunification provides a support system for newly arrived family members to help them in adapting to new ways of life in this country while still sharing some of the customs of their homelands.

While affirming and stressing the importance of family reunification in immigration policy, the Commission also recognized the importance of providing for the immigration of persons who do not have close family ties in the United States. Not everyone is fortunate enough to be part of a recent migration chain to this country, and permitting, and indeed encouraging, the migration of new groups of immigrants broadens the diversity and characteristics of new immigrants and the richness of their contributions to U.S. culture and society. Beyond these contributions such immigrants can bring skills that are needed in the United States and that contribute to economic growth. Although the United States cannot accept all who would like to come, immigration should be an achievable goal for some who have no claim on this country other than a strong desire to participate in and contribute to U.S. social and economic life by taking advantage of the opportunities it offers.

The United States, on the basis of its heritage and tradition, should also continue to be a haven for refugees from political tyranny and persecution. Although the United States can only play a small part in accepting some of the world's 16 million refugees, a strong refugee policy as a part of overall immigration policy, eases the burden on other countries of first asylum, supports the United States in its efforts to remain a champion of freedom, and promotes the spirit of freedom in U.S. society. Refugees, like immigrants, also contribute to the well-being of all Americans even though their initial economic cost to society is high.

Based on its analysis of past and present immigrant admissions systems and the issues frequently brought to the Commission's attention in letters, public hearings and consultations, the staff believes that at a minimum, U.S. immigration policy should be based on the following premises:

- Immigration policy should rapidly reunify spouses and minor children;
- It is more important to reunify close family members than those that are less closely related to a U.S. sponsor;
- Place of birth should not impede the reunification of close family members;
- The reunification of families and independent immigration serve separate goals and needs of the United States. As separate priorities, trade-offs between them should be by choice, not chance;
- The immigration of persons without previous ties in the United States is an important goal in itself because of the many benefits they can bring to American society;
- The opportunity to immigrate should be open regardless of nationality; and

- The United States, as a champion of freedom and a wealthy nation with a tradition of immigration, should continue to take more than its fair share of refugees.

Current immigration policy, although meeting some of these standards, does not accommodate them all. Within the three limits now set for preferences, countries and total immigration, the current system works on a first-come, first-served basis. For an applicant to qualify for an immigrant visa, three limits must not have been reached: first, the annual worldwide ceiling for persons in the same preference category must not have been reached; second, the 20,000 per-country limit must not have been reached; and finally, the 270,000 worldwide limitation must not have been met. When visa numbers are available in each of these categories, visas are issued. However, when one or more categories have been filled, applicants are issued visas in the chronological order in which they applied.

Because of uneven patterns of demand for immigrant visas around the world, both in numbers and for individual preferences, the current admissions system does not provide a structure for implementing clear goals and criteria. For example, if demand is high for one of the preferences among persons in one or a few countries, they may use most--or potentially all--of the worldwide visas available in that preference, thus cutting off immigration from other countries in that category. In those high-demand countries, heavy demand in higher preferences shuts out immigration in lower preferences.

This problem was not addressed successfully by the 1976 amendments to the Immigration and Nationality Act. These amendments provided that in the year after a country reached its 20,000 visa limit, visas would be allocated among all preferences according to the percentages assigned by law. For example, in 1977 the Philippines used 20,000 visas, almost all of them in the second and third preferences. Therefore, in 1978, visas were distributed strictly according to the percentages legally allocated, as shown in the table on "Filipino Immigrants Admitted By Preference" in the previous chapter. When this provision is applied to high-demand countries, although some demand is met in all preferences, the backlogs--both in terms of the number of persons and the length of the wait--build up further in the higher and heavily demanded preferences. While waiting to immigrate to the United States is not inherently problematic, it is often the spouses and children of permanent resident aliens who are enduring waits of many years. While they are waiting, workers and less close relatives--who sometimes applied later and may even be from the same country-are able to get their visas and come to the United States. An employer needing a worker can get one from Japan or Germany quickly but must wait for over a decade to get one from the Philippines. Immigrating in any category but first preference from Hong Kong, a colony of Great Britain, takes years, but a person born in Great Britain itself could immigrate in any preference category either immediately or within a year or so.

Thus, although the primary goal of the present immigration system is family reunification, the current system contains provisions which interact to reunify less-close family members or to admit workers before serving the goal which is of paramount importance to U.S. society, the reunification of immediate family members. The attainment of this goal is not just good for families but is extremely important for U.S. society because it contributes to the health, stability and productivity of the petitioners. Children should not be kept from either of their parents for a long period of time, nor should husbands and wives be separated because of immigration policy.

A New Structure

> Who do we really want to reunite first? . . . Once we've decided that, then I don't think we have to pay attention to percentages within the preference system, nor to national origin.
> --Charles B. Keely, Population Council, New York Hearing.

U.S. immigration has been channeled through a structure where some immigrants are admitted under a single system of priorities based on family relationships and skills within a numerical limitation and others are admitted outside of any numerical limitation. This means, among other things, that the number of immigrants admitted to the United States each year actually is greater than the numerical limitation. When national origin quotas were in effect, demand to immigrate was at great variance with the size of individual country quotas, and special legislation was intermittently passed for refugees or backlogged visa applicants inadmissible because of the quotas.

More recently, the number of immigrants admitted annually has fluctuated widely above the 270,000 numerically restricted from 358,600 in 1969 to 601,400 in 1978, over a two-thirds variation. Although the fluctuation is due in small part to differences in the number of immediate relatives admitted in individual years, the greatest deviation has resulted from numerically exempt adjustments of refugees and admission of immigrants under special circumstances such as those qualified for visas under the Silva decision.*

The present system is in some ways too flexible--there is little control over the total number of immigrants entering in a year--and yet in other ways, it is too rigid because of strict preference and per-country ceilings which keep some higher-preference, close family members waiting for years while lower-preference immigrants enter expeditiously. Further, by having a single system of preferences which serves both family reunification and economic needs, the priorities and goals of immigration policy are confused.

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*Between July 1, 1968 and late 1976, 145,000 Cuban refugees adjusted their status as numerically limited immigrants charged to the annual Western Hemisphere ceiling of 120,000. During 1976 a decision was made to adjust the Cubans as numerically exempt immigrants outside the hemispheric ceiling which led to the Silva vs. Levi suit and the judgment that the the 1968 to 1976 Cuban adjustments had erroneously been charged to the ceiling. The judge also decreed that an additional 145,000 visas outside the ceiling must be issued to other Western Hemisphere immigrants who would have been able to enter earlier under the ceiling if all the Cubans had been processed as numerically exempt immigrants. See also Appendix D to the Staff Report, Papers on Legal Immigration to the United States, "The Silva Case."

One option considered for achieving control and yet retaining managed flexibility would be an immigration system working within either a total annual numerical ceiling or an annual target and a longer-range--such as five years--ceiling on immigration. All immigrant and refugee admissions would be included under the overall ceiling or target, including such groups as spouses and children of U.S. citizens who traditionally have been exempt from any numerical limits, although these groups would remain top priority. Under the annual ceiling concept, this system would work much like the present system, but with all immigration included within a much expanded annual numerical world ceiling. If long-range ceilings were established with annual targets, annual immigration could vary--perhaps within a set range--providing that over the long-range period the ceiling was not exceeded. This would permit increased flexibility in unpredictable situations such as emergency refugee admissions.

Early in its work, the staff proposed a single overall ceiling or target for immigration through three immigration channels or preference systems, one for family reunification, a second for independent immigration and a third for refugees. Each would have had a separate ceiling or target in keeping with the relative priority accorded the specific goal being served and in keeping with foreign and domestic concerns. As these concerns changed, the number of visas allocated to each of three subcategories--family, independents and refugees--would have been adjusted to reflect new priorities. For instance, if refugee flows necessitated greater numbers than those allocated, numbers to accommodate the additional refugee entries could be taken from the independent category or possibly both the independent and family categories. If more workers with particular skills were needed, other category ceilings could be adjusted to allow the admission of more workers, and so on.

The resulting structure--a worldwide ceiling or target on total immigration with three subceilings serving separate immigration goals--would have many advantages. By placing a fixed ceiling on immigration, whether based on one or several years, planning for immigrant admissions would be facilitated. Increases in the U.S. population due to immigration would be stabilized and predictable. This variable in U.S. growth could also be more readily controlled by raising or lowering the overall ceiling or target to accommodate specific domestic concerns such as fertility rate, unemployment rates or world conditions. Further by creating separate preference ceilings and numerical limits to serve different immigration goals, each of these goals would be served more directly and changes in priority among goals could easily be accommodated. Unlike under the present system, changes in priority would be intentional and for specific purposes rather than left to the chance patterns of demand of applicants for immigrant visas.

Under such a system where both control and flexibility were emphasized, an administrative mechanism to oversee the operation of the immigrant admissions system, to study foreign and domestic circumstances and to periodically recommend changes in numbers and priorities was also believed to be desirable. Although this function could be carried out by an existing cabinet department, because of the current fragmented responsibility for immigration policy, it was believed that such a function could best be undertaken by a separate entity with broader policy and fewer operational concerns.

Although an Immigration Advisory Council, as just described, would be small and have few staff members, the Commission staff believed that such an entity was desirable to ensure that immigration policy was serving the national interest. The

Council would ensure that such was the case by instituting a program of continuous study and evaluation of related foreign and domestic circumstances, coordinating immigration-related research and making periodic reports and recommendations for change to the president and Congress.

Although there was support among many immigration experts and several Commissioners for an all-inclusive numerical ceiling on immigrant and refugee admissions, many believed that the immediate relatives of U.S. citizens and refugees, should not be included in fixed ceilings or targets. They pointed out that even if given the highest priority within the family reunification category, all spouses, children and parents of U.S. citizens might not be able to immigrate, and the perception would exist that these family members--as well as refugees--were no longer accorded high priority. They also pointed out that emergency refugee flows were unpredictable and, in any given year, could contribute to substantial delays in the admission of the immediate relatives of U.S. citizens. This would create a highly undesirable tension between the humanitarian goals of refugee admissions, and the strong desires of U.S. citizens to bring their closest relatives to the United States, perhaps with great foreign policy significance at some point.

Based on discussion with additional experts and Commissioners, the staff revised the evolving structure for the admission of immigrants to include both numerically exempt and numerically limited immigrants while retaining separate admissions categories for family, refugees and workers.

Although this system would not provide for a totally predictable number of entries each year, it was thought by a majority of Commissioners that it would be more realistic in anticipating the pressure of both domestic and foreign politics. Thus, three groups would remain outside of the numerically restricted allocation of visas--refugees, certain immediate relatives of U.S. citizens and specified groups of special immigrants which have traditionally enjoyed exempt status. Although increasing slightly each year, the number of immediate relatives of U.S. citizens and the numerically small group of special immigrants who would be admitted outside of the numerical limits is predictable in the near term. The number of refugees is not as predictable for any given year, although the Refugee Act of 1980, which created the separate admissions category for refugees that the Commission advocates, calls for a normal flow of 50,000 with additional entrants admitted by the President following consultation with the Congress.

The Commission did not reject entirely the concept of flexibility through the periodic adjustment of the number of numerically restricted immigrants. Although many Commissioners supported the concept of an independent Immigration Advisory Council, a majority believed that a similar review function could be adequately undertaken under less formal circumstances by the House and Senate Judiciary Committees in conjunction with the concerned federal agencies.

What Kinds of Immigrants Should be Admitted Under a New Admissions System?

> In its implementation, the preference system has to be improved to be adequate. . . . I believe that serious consideration should be given to the possibility of taking second preference out of the quota system.
> --Reverend Rafael Melian, Chairman of the Citizens Committee on Immigration, New Orleans Hearing.

> I am a permanent resident and a physican and want to bring my parents to the U.S.. . . . I work very hard . . . and all one wants in return simply is to propose that one's parents have a chance to live in the same country.
> --John Elias, Albany, New York Hearing.

> In view of the oversubscribed conditions of fifth preference visas, I believe it is incumbent upon the Select Commission to . . . arrive at a new formula for eligibility for fifth preference. . . . I believe that a distinction should be made between the married or unmarried sibling.
> --James Hardin, Secretary, Association of Immigration Directors, U.S. Immigration and Naturalization Service.

> We feel that family and family reunion for many ethnic groups means family and family ties, which definitely include married brothers and sisters, and, in fact, we go even further, grandparents would be welcome there, too, in fact, we go even further, fireside relatives like an aunt who's . . . not married and living with the family, that is part of a family too . . . they should not be subjected to a definition by other ethnic groups just because other ethnic groups have different definitions of family in their tradition.
> --Father Joseph A. Cogo, Executive Secretary, Italian-American Committee on Migration, New York Hearing.

Traditionally, immigration law has specified certain groups of immigrants who should be admitted with preferential treatment based on relationships to persons in the United States or U.S. labor-market needs. The number of immigrant groups listed for special treatment has increased over time and the priority granted each has changed, but currently spouses, sons and daughters, and brothers and sisters of U.S. citizens; parents of adult U.S. citizens; spouses and unmarried sons and daughters of permanent resident aliens and needed skilled workers are singled out in U.S. immigration policy for preferred entry. Immigration policy also has provided for the entry of other qualified nonpreference immigrants if the specified groups given preferential status do not require all of the available visas. The chart on "Current Visa Allocation System" shows the current numerically exempt and limited groups of immigrants specified in the Immigration and Nationality Act and their respective priorities.

CURRENT VISA ALLOCATION SYSTEM

NUMERICALLY EXEMPT IMMIGRANTS

Immediate relatives of U.S. citizens

Spouses
Children
Parents (of U.S. citizens at least 21 years of age)

Special immigrants

Certain ministers of religion
Certain former employees of the U.S. government abroad
Certain persons who lost U.S. citizenship

NUMERICALLY LIMITED IMMIGRANTS (270,000)

Preference	Groups Include	Percentage & Number of Visas
First	Unmarried sons and daughters of U.S. citizens and their children	20% or 54,000
Second	Spouses and unmarried sons and daughters of permanent resident aliens	26% or 70,000*
Third	Members of the professions of exceptional ability and their spouses and children	10% or 27,000
Fourth	Married sons and daughters of U.S. citizens, their spouses and children	10% or 27,000*
Fifth	Brothers and sisters of U.S. citizens (at least 21 years of age) and their spouses and children	24% or 64,800*
Sixth	Workers in skilled or unskilled occupations in which laborers are in short supply in the United States, their spouses and children	10% or 27,000
Non-preference	Other qualifed applicants	Any numbers not used above*

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*Numbers not used in higher preferences may be used in these categories.

Letters and testimony to the Select Commission included many suggestions for adding to or eliminating from groups of immigrants included in the immigrant admissions systems. Within the family reunification category, suggestions were made for adding the grandparents of U.S. citizens and permanent resident aliens, the parents of minor U.S. citizens and the parents of permanent resident aliens. Advocates of including immigration preferences for these groups cited the closeness of grandparents in the extended family unit of many major immigrant groups--especially those from Asia--and the hardship often caused by the immigration of families who had to leave aged grandparents behind because they could not qualify under the existing immigrant-admissions system. Similar arguments were made for the parents of permanent resident aliens and the parents of minor U.S. citizens, where the relationship is unarguably quite close. Both of these latter groups received some immigration priority in the Western Hemisphere--but never in the Eastern Hemisphere--prior to the 1976 amendments to the Immigration and Nationality Act. Prior to that amendment, in the absence of a preference system for the Western Hemisphere, all natives of that hemisphere potentially qualified for immigrant status if they could obtain labor certification. Parents of permanent resident aliens and minor U.S. citizens among other relative groups, were exempted from the labor certification requirement, however, which was the major hurdle to qualifying for an immigrant visa. Aside from the humanitarian aspects of including these parents, advocates further cited the benefits recently lost by certain Western Hemisphere applicants in these groups.

Given the huge demand to immigrate to the United States, others advocated only the reunification of the closest family members--husbands and wives, sons and daughters and, perhaps, parents of adult U.S. citizens. These spokespersons argued against including any additional groups of immigrants and further called for eliminating the existing fifth preference for brothers and sisters of adult U.S. citizens. They contended that the closeness of the sibling relationship and the compelling need for reunion were less great than for immediate relatives. In addition, they pointed to the exponential growth inherent in the preference for brothers and sisters.

As well as addressing specific family groups of immigrants to be included or excluded, interested persons also called for changing the priorities accorded different groups within U.S.

immigration policy. Included among these suggestions were:

- adding the current, underutilized first-preference category for unmarried adult sons and daughters of U.S. citizens to the numerically exempt immediate relative category,
- moving the present second preference for spouses and unmarried sons and daughters of permanent resident aliens outside of the numerical limitations; and
- combining the first and fourth preferences into a single preference to include all adult sons and daughters of U.S. citizens, married and unmarried.

Supporters of these individual changes believed that these amendments would increase the fairness of U.S. immigration policy and greatly enhance the goal of family reunification.

Persons also testified before the Select Commission in favor of nonfamily immigration. Many believed that the current system was too restrictive and that greater opportunity to immigrate should be accorded to nonfamily and non-highly-skilled immigrants. Many argued--including some Commissioners --that their forefathers who helped build the United States could not qualify under today's immigrant selection system and that this country was missing a great opportunity by closing the door to most nonfamily immigrants. On the opposite side, others testified that such "new seed" immigrants, although once the backbone of America, were no longer affordable in addition to family-related immigrants, because of population pressures within the United States, high unemployment, especially among unskilled and low-skilled U.S. workers, strains on the environment, and severely limited resources.

Advocates of a separate and expanded category for independent immigrants also testified in behalf of including provisions for specific types of nonfamily immigrants such as investors, retirees who had the financial means to support themselves here, workers who were needed in the United States, and elite, world-class professionals and artists. Provisions to specifically expedite the entry of these groups of immigrants do not exist under the current system.

The staff undertook independent research on who should be given priority under the immigrant-admissions system, given the three goals set for it and the current and projected demands to immigrate to the United States. As shown in the following table, registered demand to immigrate has grown consistently over the past several years, and by January 1980, over a million applicants were registered for immigrant visas at consular posts abroad. A year later, 1.1 million

ACTIVE IMMIGRANT VISA APPLICANTS REGISTERED AT U.S. CONSULAR OFFICES JANUARY 1, 1978-1981

Preference category	1978	1979	1980	1981
First	3,626	4,880	6,334	5,878
Second	68,160	120,211	176,087	168,351
Third	35,094	49,540	40,950	17,883
Fourth	19,620	29,950	45,618	50,921
Fifth	215,976	233,191	507,756	551,213
Sixth	16,200	18,263	30,609	23,579
Nonpreference	360,703	289,860	280,709	286,057
	719,379	745,895	1,088,063	1,103,882

SOURCE: Department of State, Bureau of Consular Affairs, Visa Office, unpublished data.

persons were registered. Aside from refugee adjustments, which reflect sporadic emergency flows of refugees to this country, numerically exempt groups of immigrants have also increased slowly but steadily over the past decade, and there is little reason to believe that such demand will decline.

The likely future increase in demand to immigrate to the United States and the need to limit the number of persons admitted annually--a topic which will be covered in greater depth later in this chapter--led the staff to an early conclusion that limits on the groups included in the immigrant admissions system were necessary. Moreover, given the importance of reuniting immediate families, it found that a tightening rather than an expansion of the groups currently included might be warranted. Although the staff believed it desirable, at least in theory, to extend U.S. immigration policy to as many groups of persons as possible, it concluded that, given the size of the potential demand, such a policy would raise the hopes of thousands--if not millions--of persons for whom there would be no prospect of immigration. Such a policy would be likely to lead the United States into a recurrence of the existing situation of strong illegal immigration pressures and widespread dissatisfaction with U.S. immigration laws.

The staff also believed that the priority conveyed in preferences should be an accurate reflection of importance, leading to satisfaction of demand in the first preference before visas were issued in the second preference, satisfaction of demand in second preference before visas were issued in third, and so on down the list of preferences. Such a system would be contrasted to the present one in which visas are issued systematically in all preferences, regardless of the unmet demand in higher preferences. This practice results in second preference spouses and children of permanent resident aliens waiting years for visas, in some cases, while sixth-preference workers enter. Even with a separate preference system for family reunification, less-close relatives would enter while higher-preference immigrants waited under the current policy. These problems exist in the current system not only because the percentages assigned to the individual preferences do not reflect demand accurately, but also because of the intervention of per-country ceilings and the "falling down" of unused visas from a higher preference to a lower preference even though there is unmet demand in higher preferences.

The staff proposed to the Commission that the highest priority within the family reunification category should be reserved for spouses and unmarried sons and daughters of persons within the United States. Although it was decided that these relatives of U.S. citizens should be numerically exempt--as they are in the current system except for the numerically small group of first preference unmarried adult sons and daughters--the staff concluded that, although desirable from a humanitarian point of view, the spouses and sons and daughters of permanent resident aliens should remain in the numerically limited category since citizenship, with its requirements and obligations, should entail some privileges and be encouraged. Furthermore, this provides a rational basis for limiting immigration. However, within the numerical limitations, it was believed that the spouses and unmarried sons and daughters of permanent resident aliens should receive as many visas as necessary, up to the total numerical limit on family reunification. Parents of U.S. citizens would also continue to be numerically exempt, but parents of permanent resident aliens, if included, would remain in the numerically limited category.

To impose no numerical limitations on the relatives of permanent resident aliens would increase not only the size but also the unpredictability of immigration flows. The staff believed, however, that by opening the numerically limited family reunification category as widely as necessary to the immediate relatives of permanent residents, it would be possible to expedite family reunification for those resident aliens who need it most and to benefit U.S. society, within the control of the upper numerical limit for family reunification.

As originally conceived, the only other group within the family reunification category to which the staff assigned a preference was that of married sons and daughters of U.S. citizens, the current fourth preference. Within the total family reunification ceiling, any numbers unused by the first preference discussed above would be available for the married children of U.S. citizens. Although deserving preference, the staff believed that since married sons and daughters had families of their own, their need for reunification was less great. If necessary, they could endure a wait more easily than could spouses and unmarried children of permanent resident aliens.

Brothers and sisters, first explicitly allocated a percentage of the numerical limitation by the 1965 amendments to the Immigration and Nationality Act, were not given preference status in the original staff proposal for an immigrant admissions system. Given the high demand in the two family-reunification preferences with higher priority, it was unlikely that visa numbers would be available for lower preferences. The staff believed it was undesirable to include a category with the potential for enormous, unmanageable backlogs when there was little hope of issuing visas to applicants in it. Although the staff recognized the close relationship often shared by siblings, this need was not generally believed to be as compelling as that of reuniting husbands, wives, sons and daughters. Further, the staff found that the inclusion of a preference for all brothers and sisters of adult U.S. citizens creates exponential visa demand. Married siblings--which account for about half of those entering--bring spouses who, upon naturalization, can then petition to bring their parents and siblings, along with their families. And so the chain continues. This growth had been expedited by the rapid rates of naturalization among immigrants from countries sending the largest number of brothers and sisters. The result of this spiraling pattern is an ever-increasing demand to immigrate which is totally disproportionate to the number of visas available. The staff did not believe it was wise to continue a preference which inevitably takes visas from some immediate relatives, thus not only perpetuating family instability but sometimes creating a desperate pressure for illegal migration.

Within the independent immigrant category, the staff advocated the inclusion of:

- the current groups of special immigrants, remaining outside the numerical limit set on independent immigration;
- strictly limited number of preferences for persons coming to invest substantial amounts of money in U.S.-based firms which they would manage;
- retirees with sufficient means of support;
- world-renowned persons of exceptional merit in the arts and sciences; and
- other non-specified independent immigrants who would benefit U.S. society.

Potentially included in this category were less-close relatives of U.S. citizens--including brothers and sisters--and permanent resident aliens who were unable to qualify under the limited preferences proposed in the family reunification category.

Although recognizing the United States can never return to a policy of open migration or the massive migrations of the nineteenth and early twentieth centuries, the staff believed that the United States can and should provide for new channels of immigration outside of family reunification flows. While immigration in the family reunification category by necessity tends to echo recent immigration patterns, it is desirable to broaden the opportunity to immigrate to new groups without a base in the United States or to persons from countries from which immigration was historic rather than recent.

The admission of nonfamily immigrants--which accounted for only 5 percent of all immigration in 1978--would increase the fairness of the U.S. immigration system and serve the goals of economic growth and cultural diversity by:

- Providing a means by which a predetermined number of persons without close family ties in the United States or refugee status could become immigrants. Such hard-working, freedom-seeking persons have traditionally revitalized the United States.
- Accepting a limited number but a broader range of immigrants to ensure that the United States will remain a proponent of democratic pluralism domestically and a champion of human rights, freedom and opportunity in the world.
- Increasing slightly the number and the diversity of legal immigrants admitted.

- Increasing the possibility for selecting immigrants with needed skills either by classification or a point system.

The admission of independent immigrants would not, however:

- Create a policy of open immigration.
- Qualify the world's population, or even a representative sample of it, for immigrant status. It would, however, potentially enable a more diverse group of people from a greater range of countries to immigrate.
- Qualify persons for immigrant status who do not meet the established standards for immigrants. Applicants in the independent category would have to meet the same standards as other immigrants, and would, in fact, have to meet additional qualifying criteria.
- Channel all or a significant portion of the worldwide demand to the United States. This category would accommodate a fixed number of applicants.
- Provide visas for all or a significant number of potential illegal entrants. It might, however, enable some would-be illegal migrants to enter legally.
- Relieve population or unemployment pressures significantly in developing countries. In some small countries, however, the effect could be helpful.

Although the groups of immigrants to be included in the independent category changed very little as the work of the Select Commission progressed, more substantial changes were ultimately made within the family reunification category. Recognizing the difficulty in eliminating such a high-demand category as that for brothers and sisters of U.S. citizens, the staff added a third family-reunification preference for the unmarried brothers and sisters of U.S. citizens as a step toward its eventual elimination.

Limiting the entry of brothers and sisters to those without their own families, the staff believed, would reduce the number of visas required for this category and would eliminate the problems of the exponential growth in visa demand now created by spouses of brothers and sisters of U.S. citizens. However, Commissioners voted by a narrow margin to continue to include all brothers and sisters of adult U.S. citizens within the family-reunification preference system.

Additionally, based on the vote of the Commissioners, a preference was added for the elderly parents of permanent resident aliens who have no children living outside of the United States. Although no specific definition was given of "elderly," certain ages such as 60 and 65 were mentioned, and a specific age will be specified if such a provision is ultimately incorporated into law. Also in response to a Commission vote, grandparents of adult U.S. citizens were added to the numerically exempt category. To limit at least the immediate impact of this new group, however, petitioning rights are not to attach until U.S. citizenship is obtained.

A diagram of the preferences ultimately included in the Select Commisison's proposal is included in the chart on the "Proposed Immigration Admission System."

How Will Immigrants be Admitted?

With the enlarged number of family reunification preferences included within the immigrant admissions systems, it would not be feasible to accommodate all demand within the highest preference before visas were allocated in the second preference because applicants in the two lower preferences probably would never be reached, thus nullifying their existence. Therefore, the Commission called for assigning percentages to the individual preferences, although it did not provide specific percentages. The Commission did indicate, however, that the first preference for the spouses and unmarried children of permanent resident aliens should receive a major portion of the visas devoted to family reunification.

In suggesting how visas should be allocated among family reunification preferences, the staff considered the closeness of the relationship and the amount of demand likely in each category. Backlogs of immigrant visa applicants--which are

PROPOSED IMMIGRATION ADMISSIONS SYSTEM

CATEGORY I FAMILY REUNIFICATION		CATEGORY II INDEPENDENT IMMIGRATION		
Immediate Relatives of U.S. Citizens*	Other Close Relatives	Special Immigrants*	Immigrants with Special Qualifications*	Other Independent Immigrants
• Spouses • Unmarried sons and daughters • Parents of adult U.S. citizens • Grandparents of adult U.S. citizens	Group I* • Spouses and minor, unmarried children of permanent resident aliens Group II • Adult unmarried sons and daughters of permanent resident aliens • Married sons and daughters of U.S. citizens • Brothers and sisters of adult U.S. citizens • Parents (over age 60 whose children all live in the United States) of permanent resident aliens	• Persons who lost U.S. citizenship • Ministers of religion • Former employees of U.S government	• Immigrants of exceptional skills • Investors	• Other qualified immigrants

* No per-country ceilings applied; unused visa numbers may be used in the highest category with unmet demand.

likely to develop regardless of the percentages used--are more tolerable in the lower preferences where the relationship is less close. Under the current system, unused visas from a higher preference automatically fall into the next lower family-reunification preference, and so on, with any unused visa numbers from the six preferences falling into the nonpreference category. This fall-down system has resulted in thousands of additional visas going to the fifth preference --brothers and sisters of U.S. citizens--while there are still backlogs of second-preference spouses and sons and daughters of permanent resident aliens. Prior to the 1965 amendments, unused visa numbers were first used by applicants in the highest preference with unmet demand before being made available to applicants in a lower preference. Such a provision ensures full use of available visa numbers within the true meaning of preference. The Commission chose to return to this earlier provision to help ensure accommodation of greater demand in the higher preferences.

Because of the importance of reunifying spouses and unmarried, minor children of permanent resident aliens and the heavy demand for visas among this group, the Commission decided that a major portion of the total visas made available for family reunification should be allocated to this group without regard to place of birth. Such a policy recognizes the priority of the nuclear family unit and the benefits derived from reunifyhng separated family members as expeditiously as possible. The staff would assign 70 percent of all family reunification visas to the first-preference spouses and minor, unmarried children of permanent resident aliens. If demand is not sufficient to require such a sizeable allocation of visas, the unused portion would automatically drop into the lower preferences. If demand is great enough--which is likely-the most important priority will be satisfied to the greatest extent possible within a system where visas are allocated in all preferences.

Based on priority order and estimated demand, the staff recommends the following breakdown of the remaining 30 percent of visas allocated to the family reunification category, where for purposes of calculation, the number equivalent to 30 percent of the total family reunification allocation represents 100 percent of the visas allocated to the less-close relative preferences.

Preference	Percent of Lower Family Preferences	Percent of Total Family Preferences
Adult, unmarried sons and daughters of permanent resident aliens	20%	6%
Married sons and daughters of U.S. citizens	30%	9%
Brothers and sisters of adult U.S. citizens	45%	13.5%
Parents (elderly, with all children living in the United States)	5%	1.5%
Total	100%	30%

Within this system, as stated above, unused visa numbers would first be available to applicants in higher preferences with unmet demand and then to applicants in lower preferences.

The system for assigning numbers or percentages under the independent category is different from that designed for the family-reunification category because different considerations underlie the two systems. The groups included in the independent category--numerically unlimited special immigrants, investors, immigrants of exceptional merit and other independent immigrants--are qualitatively equal groups rather than preferences indicating priorities. The first group--

special immigrants--is numerically unlimited, so a specific allocation of visas is not assigned. The classification for immigrants of exceptional merit which is, by its world-class definition, a highly restricted group, should be quite small; the staff believes an annual 2,000 visa numbers should be more than adequate. Similarly, the group for investors, who can now enter only if numbers are available in the nonpreference category, should be quite small. Investors will be limited because the amount of the investment itself should be extremely large, and because the Commission and the staff see this classification as an avenue for the admission of a relatively small number of persons rather than as a significant channel through which wealthy applicants could buy their way into the United States; 3,000 visas annually should be an appropriate limit for the immigration of investors; 10,000 visas annually should be the uppermost limit for immigrants of exceptional merit and investors combined. All other visas allocated to the independent category should be for other qualified independent immigrants, as should any of the 5,000 to 10,000 numbers unused by immigrants of exceptional merit or investors. The other independent-immigrant category combines the existing occupational preferences which have been in moderate demand and the heavily demanded nonpreference category

The staff recommends a substantial allocation of numbers to this group since it is through this group that the major goals of independent immigration would be achieved.

From Where Will Immigrants be Admitted?

> There are thousands of Asians who have been waiting patiently for many years to be reunited with loved ones in the U.S. However, the backlogged preference system for these prospective immigrants has created an administrative hurdle which effectively curtails their immigration in a manner akin to the infamous Chinese Exclusion Laws of the past.
>
> --Norman Lew, Asian American Bar Association of the Greater Bay Area, San Francisco, California

> The 1965 law aimed at adjusting past errors . . . and it did not intend . . . that it would put a halt to immigration from any one country. It should not . . . penalize Northern Europeans, but particularly . . . the Irish.
>
> --Father Bartley McFadden, Stonehill College, Massachusetts, Albany Hearing.

> And the most egregious example of discrimination is the colonial subquota . . . designed to keep blacks from immigrating to this country . . . but Hong Kong is still saddled with this vestige of what is admittedly a blatantly restrictive, racially restrictive piece of immigration legislation.
>
> --Letter from Ben Gim, President of the Chinese Lawyers Association

U.S. immigration policy has traditionally used country of birth as a major factor in determining who should immigrate to the United States. The 1965 amendments to the Immigration and

Nationality Act, although eliminating the differential and discriminatory national origins quotas, retained the principle of country of birth in its 20,000 per-country limit, designed to prevent the domination of U.S. immigraton by any one country. The degree to which this provision--which was extended to the Western Hemisphere in 1976--actually put all nations on an equal footing can be debated. The short-run effects of the 1965 amendments, which are only recently terminated, were to allocate the bulk of immigrant visas to immigrant groups with the largest backlogs, groups from countries which had low quotas but some family immigration base in the United States. Therefore, for the first several years under the new visa allocation system, immigration rose dramatically from southern and eastern European and Asian countries and dropped dramatically in northern and western European countries. This drop in northern and western European immigration, however, not only reflected the lack of priority dates among visa applicants from those countries but also the prevalence of worker rather than family-related migration from those countries, and the new more stringent labor certification requirements of the new law.

Nevertheless, although remedying some of the past discrimination of previous immigration laws, the 1965 amendments greatly increased certain streams of immigration which increased future demand from those countries, reduced other streams which reduced their family-immigration base and continued the low levels of immigration from countries which had neither high pre-1965 demand or an immigration base in the United States. As a result, European immigration--including that from southern and eastern European countries--has continually dropped off, Asian immigration has rapidly increased, and African immigration has increased but remained at a very low level. Country ceilings in the Western Hemisphere, although too recently implemented to reveal their full impacts, have had the effect of cutting numerically limited immigration from Mexico in half and greatly increasing backlogs in Mexico but increasing immigration from other Western Hemisphere nations.

The greatest problem which has resulted from the universal 20,000 per-country ceilings is the interference of country and preference ceilings, although the insufficient allocation of numbers to some preferences increased this effect. Currently, there is a six-year wait for Mexican second-preference spouses and sons and daughters of permanent resident aliens to join their family members in the United States. The wait is 2 1/2 years for Filipinos.

Meanwhile, tens of thousands of more recent lower-preference applicants will enter before these earlier second preference applicants. In part to remedy the situation with Mexico, many persons advocated retaining country ceilings but raising them for Mexico and Canada, our closest neighbors and from which immigration has been most adversely affected--although in different ways--by the 1965 and 1976 amendments to the Immigration and Nationality Act.

The Commission recommended that in no instance should country of birth interfere with the reunification of husbands, wives and minor children. It maintained country ceilings where nonfamily immigration is concerned and for less-close relatives. In searching for ways to increase the opportunity to immigrate from countries with traditionally low immigration--such as many African nations--the staff explored systems which would include giving points based on various criteria, including country of birth. By using a point system rather than a uniform per-country ceiling, points toward qualifying for a visa could be gained by being from a country with low immigration or lost by coming from a high-immigration country. However, as will be discussed in the next section, point systems were not recommended by the staff and were rejected by the Commission as a means of selecting immigrants.

The staff also reviewed historical patterns of immigration to determine the effects of the absence and presence of bountry ceilings on the origin of immigrants. Study showed that limiting immigration by place of birth had some effect on the percentage of immigrants coming from major immigrant-sending countries and that the current 20,000 limit tended to have the greatest effect in reducing domination by just a few countries. However, even with open immigration during the ninetdenth and early twentieth centuries, there was a mix in the origins of immigrants, although the top five sendhng countries tended to dominate immigration more than at the present time, as is shown in the table on "Proportion of Immigration from Countries with Five Highest Levels of Immigration."

Unsure that sufficient diversity in immigrants would be obtained without country ceilings, the Commission decided that uniform per-country ceilings for all numerically limited immigrants, except for the immediate relatives of permanent resident aliens, should be retained.

In reviewing per-country limits, the staff also studied the separate ceilings set on the colonies and dependencies of independent nations and found these lower limits, currently set at 600 visas per year, to be the last vestige of national origins quotas. Under the 1952 quota system, colonies were allocated 100 visas a year, chargeable to the quota of the mother country. This policy, as explained in legislative history, was developed with the express intent of minimizing the immigration of Blacks from the West Indies. When the quotas were abolished in 1965, a separate ceiling for colonies and dependencies was retained, although raised to 200 visas per year. In 1976, this colony limit was raised to 600 to help reduce some of the long backlogs in Hong Kong and several other dependencies.

Although most colonies or dependencies have relatively small in populations, their separate, numerical limit on visa numbers has clearly discriminated against persons born in such places as Hong Kong, resulting in backlogs that mean years of waiting before an individual can hope to enter the United States. For instance, persons born in Hong Kong must currently wait for almost 5 years for second- and fourth-preference visas, 12 years for third-preference visas, 11 years for fifth-preference visas, and 4 years for sixth-preference visas. Severe backlogs also exist in Antigua, Belize, and St. Christopher-Nevis. Several persons testified before the Select Commission about these adverse effects of separate colony ceilings. The Commission saw no reason why natives of colonies and dependencies should be penalized because of their chance place of birth, and recommended this last explicit vestige of national origins quotas be abolished.

In setting per-country ceilings on the immigration of family members--other than the spouses and unmarried minor children of permanent resident aliens--and other independent immigrants, the staff proposes the use of percentages of total immigration in each category rather than fixed numbers, largely because of its suggestion that immigrant admissions policy be flexible with regard to the annual number of immigrants to be admitted. The use of percentages would automatically keep per-country ceilings proportionate to total visas allocated regardless of the size of the total. Fixed numbers, however, would need to be changed as the total visa allocations for each category flexed. The size of the per-country ceiling percentages should be low enough to promote diversity but high enough to be reasonably responsive to demand. The staff recommends that country ceilings be set at 10 percent for both the lower family-reunification preferences and for other independent immigrants.

How Will Immigrants Be Selected?

> Testing the labor market for each job is time consuming, costly and aggravating to all concerned.
> --Aaron Bodin, Chief, Division of Labor Certification, Employment and Training Administration, Department of Labor, Baltimore Hearing.
>
> In all candor, I can say it is almost a charade or a game now, the way this labor certification process works.
> --Jonathan Avirom, President, American Immigration and Nationality Lawyers, Baltimore Hearing.
>
> It was difficult for many of our engineers to locate new positions due to the large number of foreign engineers occupying positions in our industry.
> --Letter from Ralph Cook, Chicago, Illinois.
>
> My point . . . is that the Canadian [point] system purports to do one thing; in fact it really doesn't . . . [they] have a very inoperable system, in fact, if you talk to the Canadians.
> --Charles B. Keely, Population Council, New York Hearing.

Among the most difficult decisions regarding the admission of immigrants was how "other independent" immigrants should be selected, if indeed selection criteria--beyond those already discussed, such as family relationship or country of birth--should be used. Theoretically, although the validity of the trend can be challenged, each successive immigration law has been based on increased selectivity to make immigration more congruent with national goals. This is true to the extent that nonfamily immigrants have been subject to increasingly stringent labor certification standards. However, ability to show that an applicant's immigration will not harm the U.S. labor market is the extent of selectivity under past and present law. Applicants who are not otherwise excludable are selected because they have a close relative in the United States or because of a particular skill or occupation.

In its review of possible immigrant selection systems for the largest group of independent immigrants, the staff considered several possible alternatives ranging from highly selective to nonselective systems. The existing system has been criticized by many as being too unresponsive to labor-market considerations because immigrants entering as relatives of U.S. citizens and permanent resident aliens are exempt from such screening, as are the spouses and children of labor-certified immigrants. Others argue that the current system does not consider less-close relatives, who are sometimes, due to special circumstances, as close to a person in the United States as a parent, spouse, child or sibling. Still others believe that the application of more criteria--such as age, education, skills, occupation, occupational demand, intended place of residence, knowledge of English or personal suitability--could be used to select those immigrants who would be most likely to succeed in the United States and best serve the national interest.

Both Canada and Australia apply highly selective point systems based on multilple-selection criteria to the selection of immigrants. Many persons in the United States believe that a similar point system might work in this country. Supporters of a point system argue that selection on a single factor--family relationship, refugee status or needed skills--does not consider the broader demographic or socioeconomic impacts. A point system, they argue, would tie immigration policy to several other important policy areas and could make explicit and detailed those immigrant qualities which would best serve the United States.

In analyzing the Canadian point system and its applicability to the United States, the staff found that there were many significant differences in the way such a system might be applied in the two countries. First, immigration is proportionately much greater in Canada than in the United States. The 100,000 annual target for immigrant admissions is roughly comparable to one million immigrants in the United States. Because the impact is proportionately greater in Canada, it may be more desirable to attempt to control the demographic, labor-market and social impacts of immigration in that country. However, point-system criteria are not applied to all immigrant categories in Canada and the proportion of immigrants screened under the Canadian point system has declined in recent years as more close family members and fewer workers have sought entry, although this trend is expected to reverse.

An attendant problem facing Canada, even more than the United States, is that the distribution of immigrants--and the general population--is more concentrated so the local impacts of immigration may be far greater. Therefore, it may be desirable to use selective criteria to fine-tune impacts. Another difference found between the Canadian and U.S. experience is that Canada sets "targets" while the United States sets "ceilings." Canada actively seeks to reach a certain annual level of immigrant admissions and to approximate this desired level must consider, at times, changing the emphasis of its selection criteria so that more applicants can qualify. On the other hand, the United States satisfies only a fraction of the potentially qualified immigration demand within its ceilings.

Also, Canada is believed to have a much higher rate of emigration than the United States, perhaps as high as 70 percent, and may need a high degree of selectivity to promote retention of immigrants. Emigration from the United States is generally estimated at closer to 30 percent. Additionally, Canada applies its point system to some less-close family reunification immigrants; in the United States, a point system would be applied only in the independent category. One extremely important difference between the two countries is that the parliamentary system of government in Canada facilitates administrative flexibility and use of the point system to meet changing needs and goals. Such administrative flexibility does not exist in the present U.S. immigration system, although it could possibly be approximated through an Immigration Advisory Council which had responsibility for developing and administering this selection process.

Despite considerable support for a point system, it became clear that it would be difficult for Commissioners, not to mention Congress, to decide on criteria and the specific value of points to be awarded for each. Fundamental value questions are at issue. For example, if points are given for English-language ability, certain countries would clearly be favored over others. Administration of a point system could also be difficult. For example, if educational attainment is given points, how does one compare educational achievement among societies vastly different educational systems. For these and other reasons only two Commissioners voted for a point system as selection mechanism for independent immigrants.

At the opposite end of the spectrum from a highly selective, complex point system, two types of open immigration systems were considered and subsequently rejected by the Select Commission--one in which applicants were chosen on a first-come, first-served basis and one in which a lottery was used to select among immigrant visa applicants. Both of these open systems were problematic because of the enormous number of potential applicants in contrast to the small number of visas to be issued. It was also found that such systems would be likely to develop into administrative nightmares because of the volume of incoming applications to be recorded and tracked.

A situation such as this existed, though to a lesser degree, in the application for nonpreference visas prior to the 1965 amendments when registration for that category required only informing an American consul of a desire to immigrate. For many, under that system, immigration during a normal lifetime was impossible, and even though registered as applicants, many would-be nonpreference immigrants could not pass the grounds for exclusion--primarily that of public charge--once they reached the formal application stage of processing. Thus, this type of system led to considerable, unnecessary administrative processing and to many disappointed applicants who had long been waiting to immigrate.

The rejection by the Commission of both the highly restrictive systems using multiple selection criteria and the more open systems using no selection criteria led the staff to review other proposals for the selection of immigrants. In this review, in keeping with U.S. tradition, labor-related criteria--whether broad or specific in nature--appear to be the most useful for several reasons. First, the United States has programs which approximate a national labor policy which is not true for other relevant areas, such as population or language. Additionally, in recent years, immigrants other than family members and refugees have been selected only after passing a labor-market protection test. Finally, there is strong public perception that immigrants take jobs from U.S. workers and, in fact, they do compete directly with U.S. workers for jobs in many cases.

Although there are valid reasons for using labor-market criteria, their use has been questioned, largely because of the small number of immigrants so screened under the current system and the minimal impact of these workers on the U.S. labor force. For instance in fiscal year 1978, the 16,167 immigrants who obtained labor certification represented less than 3 percent of all immigrants admitted and 0.5 percent of the growth of the U.S. labor market during that year. Although all immigrants could be screened through labor-market criteria, this has never been U.S. practice since close family ties to persons in the United States or refugee status have been sufficiently important goals of immigration policy to permit selection on these criteria alone. Further, affidavits of support by sponsoring U.S. relatives or refugee-serving agencies have ensured--at least in theory--that immigrants entering under the family-reunification provisions and as refugees will have some means of support in the United States. The use of labor-related criteria to ensure employability of immigrants entering under neither of these provisions has been used in place of these affidavits of support.

Labor-market criteria also serve a useful purpose because they provide a means for reducing the number of potential applicants for immigrant visas from millions of aspiring persons who would like to come and might otherwise be qualified. They can then be applied to a much smaller group for selecting qualified immigrants. Almost of secondary importance, labor-market criteria serve positive goals for the United States by providing needed workers while still protecting the U.S. labor force.

The current labor certification process was ruled out by the Commission on the basis of testimony and analysis. In the words of its administrator at a hearing before the Select Commission, the current labor certification process was described as "time-consuming, costly, and aggravating to all concerned." Further, the current process involves individual case review and testing of the labor market for every principal applicant applying for an immigrant visa where labor certification is required (almost all third, sixth, and nonpreference cases excluding applicants' spouses and children). And, it has no mechanism to ensure that after the often contentious and enervating effort of certification, the laborcertified immigrant actually stays in the job, occupation or location of the certification, since once in the United States an immigrant may change jobs and/or residence at will. The fact that the test for the availability of U.S.

workers and impact on U.S. workers is made at the time of application for labor certification rather than at the time of actual entry further dilutes the effectiveness of the existing process. This time gap is not infrequently a span of years which extends to a decade or more in some cases. Certainly in those cases where there is a significant wait between original application and entry, the needs of U.S. employers for workers unavailable in the United States are not well served by immigration policy. Because of these problems--and doubtless many others--prospectve immigrants frequently now enter illegally without inspection or as nonimmigrants to seek jobs which will gain them certification and ultimately immigrant status. Similarly, unscrupulous employers at times ignore the availability of U.S. workers and either by themselves of through intermediaries seek out foreign employees to whom they tailor jobs and offer labor certification.

Although most representatives of organized labor remain strong supporters of a tight labor-certification process, the present method is generally criticized by those persons concerned with its administration, employers and many labor economists. Thus, the present system generally has not been well received by employers, U.S. workers or labor-certified immigrants. Many believe it has interfered excessively with the efficiency of the economic marketplace which in theory allows employers to find employees who are likely to perform well in the jobs for which they are hired. It has also resulted in costly, acrimonious litigation.

Many persons argued to the Commission and the staff that a simplified labor-certification system, such as the pre-1965 system, or other labor-related criteria would be more efficient, probably as effective and certainly not as costly or divisive. After a review of alternatives to the current labor-certification system, the staff agreed with the view that a list of excluded occupations similar to that used prior to the 1965 amendments and a job offer presented the best system, offering the optimal checks and balances between demand for foreign labor and the need to protect U.S. workers. This system--which would require both that a prospective immigrant not be in an occupation designated by the Department of Labor to be one in which there were sufficient U.S. workers and that he or she have a job offer from a U.S. employer--would have the advantages of protecting U.S. workers and ensuring that independent immigrants would be able to support themselves in the

United States. The combination of the two requirements would also help to reduce the number of qualified applicants to a realistic and administerable size and would reduce fraud. Unlike the present labor certification procedure which has been heavily criticized before the Select Commission, the pre-1965 excluded-occupation or "negative" labor certification has generally been discussed favorably. While the system had its faults, they were dwarfed by those inherent in the present system.

The staff believes that the excluded-occupation list combined with a job offer would work efficiently. Further, it would maintain an active Department of Labor role in the labor certification process through developing improved national and regional data on occupational supply and demand for keeping the excluded occupation list current. Strengthening the Department of Labor's role in this way would improve the protection of U.S. workers and further, would better serve employers.

Under the staff's proposed system, the Department of Labor certification procedure to prohibit the entry of workers would be invoked under several circumstances. First, the Department of Labor would control the entry of independent immigrants through the occupations it included on its excluded occupations list. Prospective independent immigrants would not be issued visas if they were in occupations that the Department of Labor had found to be sufficiently supplied with workers nationally or in the region of the immigrant's intended residence. Improved data on occupational supply and demand in the United States would be instrumental in keeping the excluded list of occupations up to date and accurate. Second, whenever a person or group brought documented information to the Department of Labor that the immigration of workers in a certain occupation would have an adverse impact on the U.S. labor market, this information would be evaluated by the Department of Labor and used, if found appropriate, to issue certification thus barring the entry of workers in that occupation in a given locality. Provisions would be made similarly to remove such certifications where the Department of Labor found they were no longer necessary.

Third, a further mechanism to automatically trigger Department of Labor review could include the on-going monitoring of the use of immigrant workers by U.S. employers. Prior to the 1965 amendments, when an employer petitioned for more than 25 workers during a year, the Department of Labor was to intercede. Although this regulation was often easily circumvented, the staff believes that in today's age of automation, enforcement of such a provision would be both more efficient and feasible. Depending on administrative feasibility, such a regulation could be tailored to be more fair to employers and to U.S. and foreign workers by using a percentage of total jobs filled by immigrant workers over a given period as a criterion for automatic review rather than a fixed number, which could exceed total employees in many firms and be insignificant in others.

In addition to the labor-certification procedure, controlled through a list of excluded occupations and regulations made through standard rulemaking procedures, the staff believes that job offers should be required of all principal applicants seeking visas in the other independent immigrant category. As a practical matter, job offers are generally required by consular or immigration officials as evidence that applicants will be able to support themselves in the United States and not become public charges. In the absence of the job-offer requirement, past experience has shown extensive fraud in visa applicants' occupational qualifications. With the requirement of job offers from U.S. employers who have af obvious interest in genuine skills, the likelihood of fraud is minimized substantially.

The greatest disadvantage of requiring job offers from U.S. employers is that this requirement gives an advantage to prospective immigrants with friends or relatives already in the United States who can help arrange employment and to persons who can afford to travel to the United States to seek employment opportunities rather than to persons without any ties in this country. It was this problem which caused Commissioners favoring the basic approach of the excluded-occupation list as a selection criteria to vote against the additional requirement of a U.S. job offer.* Many experts believe, however, that although less desirable from several standpoints, the combination of the two criteria--the list of excluded occupations and a job offer from a U.S. employer--offer an optimum combination. The combination will provide the greatest opportunity to immigrate while still protecting U.S. workers and ensuring that new entrants in the other independent category will have a means of support once they immigrate to the United States.

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*In considering alternative labor-market related methods of selecting independent immigrants, the Commission was divided with seven Commissioners voting for the simple, free-market principle and seven voting for a streamlining of the present system.

Many Commissioners rejected both the staff option and the no-job-offer-provision. Instead, they recommended retaining a labor-certification requirement much like that under the present system, but with major improvements which would streamline the process, reduce the acrimony of the current system and be more protective of U.S. workers.

Under such a system, the words and phrases "willing" and "at the place" would be deleted from the current exclusionary ground. Lists of occupations in short and oversupply would be retained in regulation and expanded and strengthened to reduce the number of cases where individual labor certification is required by the Department of Labor. A job offer would be required of applicants, although those whose job skills were among those on the list of occupations in short supply could possibly be exempted from the job-offer requirement.

Under this proposal, the Department of Labor would initially improve its data on occupational demand nationally and within the state employment services. As now, an employer unable to find a U.S. worker and who was requesting one from abroad would place his request, along with a job description, wages, hours and other pertinent job information with the local employment service. Unlike the present system, however, the employer would not be required to demonstrate previous recruitment efforts or otherwise document attempts at finding a U.S. worker. Under the present system, these prescribed recruitment efforts are objectionable and often circumvented by employers. In fact, there are more frequent denials because of improper recruitment efforts than for substantive labor-market impact reasons. Based on its knowledge of the local labor-market situation and expanded local labor market data available to it, the local employment service office would recommend grant or denial to the regional labor certification office of the Department of Labor. In most cases, it is anticipated that this recommendation would be followed, and a decision would be forthcoming far more quickly than under the present system and with far less acrimony. Additionally, since the proposed system would be streamlined and the procedures less strenuous, its advocates believe that employers would in most cases be able to make the request for certification themselves rather than pay costly attorney fees to get them through the process.

Native-born workers would be protected through this procedure in several ways. If U.S. workers are able, qualified and available for a job for which certification to bring in a foreign worker has been requested, based on local labor-market conditions, the labor certification request would be denied. If the employer had made a good-faith effort to find a U.S. worker, however, advocates of this approach argue that this would be unlikely. If the labor market for a particular occupation is broader than a local area, as is the case in many professional occupations where workers will relocate, this can be taken into account under the proposed system because of removal of "at the place" from the statute.

This proposed system has several disadvantages, however. Employers who could not find qualified U.S. workers would have no recourse if the Department of Labor would not issue labor certification based on available labor-market data. This would have an especially deleterious effect on small and marginal firms which could not afford the lengthy search for employees and which could have difficulty in introducing new technology or substantially improving wages and working conditions above existing standards to attract U.S. workers. Additionally, although improvements can and should be made, it always has been extremely difficult to obtain timely and accurate data on labor supply and demand. Basing decisions about individual or small numbers of similar individual cases on inadequate aggregate data could potentially result in widespread error and acrimony. It is also quite possible--based on the data source--that entries under this proposed system would be in a very narrowly defined group of mid- and upper-level skilled positions rather than in a broader range of occupations which was the intent of many Commissioners--although not all--in voting to strengthen the independent category. For these reasons, the staff continues to favor the earlier option which would return to the pre-1965 method of labor certification plus a job offer.

How Many Immigrants Should Be Admitted?

> I am here in opposition to any further substantial immigration to the United States. This is a very difficult statement to make for one who is himself an immigrant but . . . this country has reached, or is about to reach, the point of saturation.
>
> --Norbert Bikales, McLean, Virginia, Albany Hearing

> A total number of immigrants per year should be determined by needs and by capabilities of absorption of our country. A consideration should be kept in mind, however, to be generous, responsive also to the social, political, and international responsibilities of our country.
> --Father Joseph A. Cogo, Executive Secretary, Italian-American Committee on Migration, New York Hearing.

Decisions on how many immigrants should be admitted each year have most often been based on previous levels. The 170,000 ceiling adopted in 1965 for Eastern Hemisphere immigration, for instance, was not intended to increase immigration and represented the sum of the existing 158,000 quota, 10,000 refugees (conditional entrants) and a modest 2,000 visa increase, presumably to arrive at a round number. The 120,000 ceiling adopted in 1976 for the Western Hemisphere represented the average level of immigration over the previous several years. The most recent worldwide ceiling of 270,000 is the sum of the two hemispheric ceilings, combined in late 1978, less 17,400 (rounded to 20,000) conditional entrants or refugees which became part of the separately legislated 50,000 normal flow refugee admissions, which was again based on the average of recent flows.

Because of the increasing impact of immigration on U.S. population growth and hence, American life, as a result of the decrease in the fertility rate to just below replacement level, the staff has attempted to base its research concerning the numbers of immigrants which should be admitted annually on sounder ground than simply past experience. Despite the urging of the Commission on Population Growth and the American Future in 1972 and the Select Committee on Population in 1978 as well as numerous interest groups such as Zero Population Growth, the Federation for American Immigration Reform, the Sierra Club, the American Legion and the National Parks and Conservation Association, the United States does not have a population policy, nor was the Select Commission given the responsibility of recommending one.

The Select Commission staff, however, has been mindful of the debate concerning population growth in the United States and has paid particular attention to various points of view on the subject. In advising Commissioners on the number of immigrants to be admitted annually, the staff tried to strike a balance between those who advocate limiting population growth because of its impact on U.S. and worldwide nonrenewable resources and those who maintain that population growth is necessary for U.S. economic prosperity, foreign policy and national security.

Following the Commission's decision not to have a cap or ceiling on total immigrant admission because it would be unduly restrictive on the immigration of immediate relatives of U.S. citizens and the entrance of refugees, the staff focused more narrowly on a numerical ceiling which included --as does present immigration law--less-close relatives and independent immigrants.

In suggesting a numerical ceiling, the staff considered several factors including current levels of immigration, estimated levels of emigration, the U.S. fertility rate and the rate of population growth.* During the 1976 through 1981 period, immigrant and refugee flows to the United States have averaged 567,000. In addition to these numbers of legal entries, however, have been sizeable but largely unestimable flows of undocumented/illegal immigrants. Although the precise rate of permanent immigrant departures is unknown, historical data and recent analyses based on census data indicate that the overall level of emigration of legal immigrants runs about 30 percent of the level of immigration.

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*See Chapter VI for a fuller discussion of these factors.

Emigration rates vary significantly by status at entry and country of origin, however. Mexican and Canadian immigrants are more likely to leave than Chinese or Korean immigrants, and most immigrant groups are likely to show a greater propensity to emigrate than refugees, such as those recently coming from Cuba or Indochina. Many believe that undocumented/illegal entrants from Mexico have traditionally emigrated at a high rate, although it is further believed that this trend may be slowing as more undocumented/illegal aliens are settling in cities and in more stable jobs than did earlier migrants who tended to work in seasonal agricultural jobs and as increased border enforcement makes regular trips back and forth more risky.

Since immigration is a factor--although a far less significant factor than changes in the fertility rate of U.S. women--affecting population size, the staff considered the impact of immigration levels on the future size of the U.S. population as a part of its deliberations on suggested levels of immigration. The staff based its considerations on the Commission's recommendation of an annual numerically restricted limit of 350,000 visas, plus 100,000 visas each year for five years to help clear existing backlogs, on an estimated 170,000 numerically exempt immigrants--primarily the immediate relatives of U.S. citizens--and on an estimated annual refugee flow of 100,000. Assuming the emigration rate of immigrants to be 30 percent of the level of immigration and that for refugees to be 5 percent, net immigration would average 459,000 per year. If gross illegal immigration is reduced to 50,000 annually following the introduction of new enforcement measures, with a net of 35,000, then average annual net immigration would still remain below 500,000, the figure for new entrants which would bring the United States to a stable population of 274 million and negative population growth by the year 2050. No additional entrants would be likely to result--at least for several years--from legalization since those qualifying would already be here and any immediate family members who would immigrate to join legalized aliens would be admitted under the numerical restrictions set on immigration.

If the number of immediate relatives of U.S. citizens went significantly above 150,000 a year ten years in the future or the United States experienced large unanticipated refugee flows, downward adjustments in the size of numerically limited immigration could be made. Similarly, if the fertility rate went up, the numerical limits could be lowered. On the other hand, if the reverse of any or all of these occurred, upward adjustments could be made. Such adjustments could be made on a five year basis under congressional authority.*

The Commission's recommendations, as stated above, would allow negative population growth within 80 years while still bringing all of the increased benefits of immigration to the United States--family reunification, economic growth, cultural and linguistic development, strengthening of ties with other nations, manpower capabilities and the role of the United States as a world leader--without the alleged deleterious effects of continuous population growth.

Under the current 270,000 ceiling, 216,000 visas are allocated to the family-reunification preferences, and 54,000 to the two occupational preferences. The staff believes that both of these categories should be given increased numbers of visas under a new immigration system. Assuming 350,000 visas are made available annually to numerically limited immigrants, the staff suggests that 250,000 be devoted to the family reunification category and 100,000 to the independent category. The greater number of visas available to relatives of persons in the United States would bring about reunion-especially where the relationship is closest--more expeditiously. The increased number of visas available to nonfamily immigrants would enhance the goals of economic growth and cultural diversity and increase the fairness of U.S. immigration policy. During those years when 450,000 visas were available--the first five years following enactment of a new immigration system as recommended by the Select Commission--the staff believes that these additional visas should be used as necessary to clear all backlogs expeditiously without specific assignment to specific groups in either category.

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*Projections based on a 1.8 fertility rate and stabilization by the year 2050 at a population of 274,125 are based on an annual net immigration level of 500,000. If the fertility rate of U.S. women increased to 2.0, however, the U.S. population would continue to grow at the rate of 0.2 percent beyond 2080. Leon F. Bouvier, The Impact of Immigration on U.S. Population Size, Washington, D.C.; Population Reference Bureau, 1981.

The Select Commission's Immigrant Admissions System--A Summary

The system for admitting immigrants to the United States as developed in the preceding sections is not a radical departure from the present policy or from the evolution of systems regulating immigration to this country. It makes some modest changes which the Commission and the staff believe will improve upon present policy and increase the degree to which immigration serves the national interest.

Under the proposed immigrant admissions system, immigrant visas would be allocated in two distinct categories, one for family reunification and the second for independent immigration. By allocating visas in two rather than one preference system, the distinct goals of immigration--family reunification, economic growth and cultural diversity--can be served better and many of the inequities of the current system can be alleviated.

The number of visas available to numerically limited immigrants would be increased from the current level of 270,000 per year to 350,000, with an additional 100,000 visas available annually for the first five years to help clear the long backlogs of immigrant visa applications which have developed under the current system. The 80,000 increase in visas made available to numerically limited immigrants under the proposed system would be distributed between both selection categories to expedite the reunion of families, to increase the fairness of U.S. immigration policy by increasing the number of visas available to persons without ties in the United States, and to enhance economic growth and cultural diversity. Of the 350,000 total visas, 250,000 would be allocated to applicants in the family reunification category, and the remaining 100,000 would be issued to independent immigrants.

The groups of family members to whom preference would be given under the proposed system would be changed slightly. In addition, the proportion of visas allocated to each would change in some cases. The immediate relatives of U.S. citizens would continue to be admitted outside of any numerical limitations. Spouses and children of U.S. citizens and parents of adult U.S. citizens would still fall within this group; the unmarried adult sons and daughters of U.S. citizens who are currently first preference and a new group, grandparents of adult U.S. citizens, would be added to the numerically exempt immediate-relative category.

The greatest changes in the numerically limited family reunification preferences concern the relatives of permanent resident aliens and are aimed at remedying some of the hardship caused by the current policy which has kept many nuclear families separated for years. Under the proposed immigrant admissions system, 70 percent, 175,000 of the 250,000 visas allocated for family reunification would be available for the immigration of the spouses and minor, unmarried sons and daughters of permanent resident aliens. Aside from the benefit of a much larger block of immigrant visas than now available, this group also would be exempted from the per-country ceilings which would apply to all other immigration in the numerically limited family-reunification category. Therefore, although numerically limited, the closest relatives of permanent resident aliens would be given significantly greater advantages than under the existing system and than granted other relatives under the proposed system. The adult, unmarried sons and daughters of permanent resident aliens would be accorded a separate preference and 6 percent (15,000) of the visas available for family reunification; per-country ceilings would apply to this group.

Also, in recognizing the relatively infrequent cases when elderly parents are left alone in their homelands after their families immigrate, the proposed system would also, for the first time, grant a limited preference to the parents of permanent resident aliens. Such elderly parents--if they had no children living outside of the United States--would be eligible for up to 1.5 percent (3,750) of the family-reunification visas available annually.

Two other groups of relatives--the married sons and daughters of U.S. citizens and the brothers and sisters of adult U.S. citizens--currently receive preference and would continue to do so under the proposed system, although strong consideration was given to either eliminating a preference for brothers and sisters or reducing its scope to include only unmarried siblings. The married sons and daughters of U.S. citizens and their families would be allocated 9 percent of the family reunification visas; brothers and sisters of adult U.S. citizens and their families would be issued 13.5 percent of the visas in the family-reunification category.

Although the spouses and minor unmarried children of permanent resident aliens would be exempt from per-country ceilings, all other family reunification groups--adult, unmarried sons and daughters of permanent resident aliens, married sons and daughters of U.S. citizens, brothers and sisters of adult U.S. citizens, and qualified elderly parents of permanent resident aliens--would be subject to per-country ceilings equal to 10 percent of the number of visas available for family reunification, other than the immediate families of permanent resident aliens. The per-country ceilings for these lower family-reunification preferences would, therefore, be 7,500 under the proposed system.

Unlike the fall-down provision in current law, where unused visas from higher preferences automatically drop into lower family reunification preferences, under the proposed system, unused visas from any preference would first be made available to applicants in the highest preference with unmet demand before falling into the next lower category, and so on. This provision, which is a return to pre-1965 policy, better recognizes the true meaning of preference and priority than does a system where unused numbers always fall into lower preferences, regardless of unmet demand in higher preferences.

Consideration for entry in the independent-immigrant category would be accorded to several nonfamily groups of immigrants, including numerically exempt special immigrants, persons of exceptional merit, investors and other qualified applicants. However, as equal priorities within the independent category, these groups would not be accorded preference status in the same sense as the groups included within the family reunification category. Special immigrants--numerically small groups of immigrants such as certain ministers of religion and former employees of the U.S. government abroad--who have traditionally been outside of any numerical restrictions would continue to enjoy that privileged status. Of the 100,000 visas available annually for independent immigrants, the staff suggests that 3,000 visas be set aside for immigrants of exceptional merit and 2,000 visas be allocated to investors who are investing substantial amounts of capital--perhaps $250,000 or more--in a U.S. enterprise they will manage. The staff believes that 10,000 visas for these two groups should be an absolute maximim allocation. The remaining 90,000 to 95,000 visas plus any not used by immigrants of exceptional merit or investors would be available for other independent immigrants who would qualify for immigrant status under specific criteria.

From among the wide range of selection criteria for independent immigrants that was considered, two alternative mechanisms, both involving labor-market-related criteria, have been selected as most suitable to the category and as administratively feasible. Seven Commissioners preferred retaining but streamlining a labor-certification process similar to the present system under which nonrelative workers are excludable unless they can obtain labor certification from the Department of Labor; other Commissioners and the Commission staff prefer a less cumbersome system. Under the preferred, simpler alternative, independent immigrants would be admissible unless the Department of Labor ruled that there were sufficient workers in a given occupation in the place in which the prospective immigrant intended to live. The staff believes that a job offer from a U.S. employer, which would reduce fraud and easily enable prospective immigrants to demonstrate that they would be able to support themselves in the United States, should also be required.

Per-country ceilings would not apply to special immigrants who are exempt from all limits, immigrants of exceptional merit or investors because of the unique nature of these groups. Such ceilings would apply to all other independent immigrants, however. Per-country ceilings in the independent category would be set at 10 percent of the numerical limit on other independent immigrants or 9,500.

The structure, categories and numbers relating to the proposed immigrant admissions system and a comparison with the present system are shown in the following charts. The staff believes that this system, while not a major departure in many ways from the present system, makes some important and significant improvements which will make U.S. immigrant admissions policy more equitable than has been true in the past.

Early in its work the staff set several goals or premises it believed U.S. immigration policy should meet. Evaluating the final proposed policy--although evolved through many versions over the past 18 months--against these premises reveals that the proposed policy meets the established goals.

- Immigration policy should rapidly reunify spouses and minor children.

The spouses and minor children of U.S. citizens would remain outside any numerical restrictions under the proposed plan.

SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY
STAFF PROPOSED IMMIGRANT VISA ALLOCATION SYSTEM

I. Family Reunification	250,000
Immediate Relatives of U.S. Citizens*	
° Spouses	
° Unmarried sons and daughters	
° Parents of adult U.S. citizens	
° Grandparents of adult U.S. citizens	
Other Close Relatives	
° Group I	175,000
-Spouses and minor, unmarried children of permanent resident aliens	
° Group II	75,000
-Adult, unmarried sons and daughters of permanent resident aliens.........(20%)	15,000
-Married sons and daughters of U.S. citizens..........................(30%)	22,500
-Brothers and sisters of adult U.S. citizens..........................(45%)	33,750
-Parents (over age 60, all of whose children live in the United States) of permanent resident aliens......(5%)	3,750
II. Independent Immigrants	100,000
° Special immigrants*	
° Immigrants with special qualifications	
-Immigrants of exceptional merit	3,000
-Investors	2,000
° Other independent immigrants	95,000
TOTAL	350,000

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*Numerically exempt

COMPARISON OF PROPOSED AND CURRENT VISA ALLOCATION SYSTEMS

	PROPOSED SYSTEM	CURRENT SYSTEM
Immigrant classifications		
I. Family reunification	• Separate category I for family reunification	• Family reunification preferences combined with occupational preferences
A. Immediate relatives of U.S. citizens	• Spouses	• Spouses
	• Minor unmarried sons and daughters	• Minor unmarried sons and daughters
	• Adult unmarried sons and daughters	• 1st preference
	• Parents of adult U.S. citizens	• Parents of adult U.S. citizens
	• Grandparents of adult U.S. citizens	• No provision
B. Other close relatives	• Spouses, minor unmarried sons and daughters of legal permanent residents	• 2nd preference
	• Adult unmarried sons and daughters of legal permanent residents	• 2nd preference
	• Married sons and daughters of U.S. citizens	• 4th preference
	• Brothers and sisters of adult U.S. citizens	• 5th preference
	• Certain parents (over age 60) of permanent resident aliens	• No provision
II. Independent immigration	• Separate category II for independent immigrants	• Occupational preferences combined with family reunification preferences
A. Special qualifications	• Immigrants of exceptional merit	• Qualified under 3rd preference
	• Investors	• Qualified under nonpreference, when available
B. Other independent immigrants	• Other independent immigrants	• 3rd, 6th and nonpreference
III. Refugees	• Refugee Act of 1980	• Refugee Act of 1980
Annual Worldwide ceiling on Immigration	• 350,000 (plus 100,000 additional numbers per year for first 5 years)	• 270,000
Per-country ceilings	• Separate per-country ceilings for family reunification and independent categories • No per-country ceilings for spouses and minor unmarried sons and daughters of legal permanent residents • No distinction between independent nations and dependencies	• Standard 20,000 per-country ceiling • Standard 600 ceiling for dependencies

Although it cannot be stated that the spouses and minor children of permanent resident aliens would never be separated from their U.S. resident alien relatives, the proposed system goes as far as possible to ensure expeditious reunification of these persons while still retaining some control over the number of immigrants entering annually and providing channels of immigration for certain other relatives of U.S. citizens and permanent resident aliens. Spouses and minor children of permanent resident aliens are allocated 70 percent of an increased number of family reunification visas and are exempted from per-country ceilings. Insufficient numbers and restriction by country of birth have been the two greatest factors contributing to the intolerable backlogs and long waits for reunification of this group under the present system.

- It is more important to reunify close family members than those that are less closely related to a U.S. sponsor.

The proposed system strongly favors the reunification of spouses and minor children with relatives, in the United States, regardless of citizenship. Priority given other relatives is based on the closeness of the relationship. The numbers of visas proposed to be allocated to these groups were based on the closeness of the relationship and proportionate demand in each. Additionally, the use of a new system for the reallocation of unused visa numbers to the highest preference category with unmet demand, rather than a strictly fall-down system as under the present policy, would further the goal of reunifying closer relatives first.

- ° Place of birth should not impede the reunification of close family members.

As discussed above, the proposed system unlike the current policy, would remove the spouses and minor children of permanent resident aliens from under the restrictive per-country ceilings which have caused so much hardship to such persons in the past.

- ° The reunification of families and independent immigration serve separate goals and needs of the United States. As separate priorities, trade-offs between them should be by choice, not chance.

For the first time in the history of U.S. immigration policy, the proposed system has recognized the distinct goals served by the reunification of families and the immigration of workers and has divided them into separate preference or entry categories, each with its own allocation of visas. In such a system, the two types of immigrants would not compete directly with one another for the same visas. Further, any policy decisions to adjust the number of visas allocated to the two categories would be the result of choice rather than chance patterns of demand as under the current system.

° The immigration of persons without previous ties in the United States is an important goal in itself because of the many benefits they can bring to American society.

The creation of a separate category for independent immigrants realizes this important goal. The allocation to this group of a significant portion of the total number of visas available further recognizes the social, cultural and economic benefits independent immigrants would bring to the United States.

° The opportunity to immigrate should be open potentially to all persons, regardless of nationality.

While removing the closest relatives from under per-country ceilings to further specific family reunification goals, the proposed system would retain per-country ceilings for other family reunification and independent immigrants. Although this policy would restrict the number of entries from some countries, it would ensure that a few countries with high demand and large immigration bases in the United States would not use all available numbers. It is the express intent of the proposed policy to continue taking substantial numbers of immigrants from large immigrant-sending nations but also to allow, if not encourage, immigration from countries--such as many in Africa--which have never had strong immigrant flows to this country and to allow persons from countries with historic rather than recent flows such as Ireland, to renew their immigration.

- The United States, as a champion of freedom, and a wealthy nation with a tradition of immigration should continue to take more than its fair share of the world's refugees.

The Select Commission and the staff strongly endorse the Refugee Act of 1980 which distinguishes between refugee- and immigrant-admissions policies and establishes clear-cut processes for the admission of both normal- and emergency-flow refugees to the United States. The specific measures outlined in the 1980 Refugee Act have given high priority to the humanitarian goal of refugee admissions and will eliminate the problematic ad hoc measures required in the past to bring major refugee groups to the United States.

How should the new system be phased in?

As a result of the work of the Select Commission, several new initiatives have been proposed to deal with the major problems that have developed under the current system. The undocumented/illegal alien problem has been addressed in part by recommendations for better enforcement measures and a program to legalize certain qualified aliens currently resident in the United States. Problems regarding the admission of immigrants, as described earlier in this chapter, have also been addressed through the development of a new system under which immigrants would be admitted to the United States.

Some of the changes recommended call for a planned response to ensure that their implementation would be smooth and lead to sound policy once fully implemented. Aside from issuing an increased number of visas in a different format, two other factors affect the implementation of a new immigrant admissions system: the anticipated entry of the spouses and children of newly legalized aliens following the proposed legalization program and the large backlogs of immigrant visa applications that now exist.

The timing and phasing of these components of the proposed system and the attendant "clean-up" from the current system posed many problems and led the staff to devlop the following list of premises and assumptions as a guide in developing a comprehensive plan which would be both fair and administratively feasible.

On legalizing undocumented/illegal aliens

1. Aliens who meet all the criteria for legalization should not be counted against any immigration ceilings or targets.

   It is generally believed that most undocumented/illegal aliens are from only a few countries. Charging legalized aliens to country ceilings would extend the legalization program for years and would replace all new immigration from those areas during that period.

2. The legalization program should have a specific, limited duration, with additional start-up and phase-down time.

3. An enhanced enforcement program will be in place to curb future flows of undocumented/illegal entrants.

On backlog clearance

1. The clearance of backlogged visa applications should be concurrent with a legalization program for aliens illegally in the United States.

   Those persons who have obeyed U.S. law and waited overseas for visas should, at least, receive a benefit comparable to the one given persons illegally residing in the United States.

2. The overseas immigrant-visa backlog is 600,000.

   This estimate was derived by the Visa Office from their January 1, 1980 report of visa registrants. It includes only backogged applicants expected to be abroad who would actively pursue their applications. (Some applicants come to the United States and wait here illegally for their visas; others apply as an insurance measure and do not really intend to immigrate.)

3. Immigrants admitted under the backlog clearance should not be charged to country or preference ceilings.

   The backlogs could not be cleared equitably or completely in a reasonable time period under country or preference ceilings because current visa applicants are not evenly distributed among sending countries or preference categories. At least six countries have backlogs far in excess of the current ceiling of 20,000 (China, the Dominican Republic, India, Korea, Mexico and the Philippines).

4. Current applicants for immigrant visas should be processed before new applicants are admitted in the same categories.

   Fairness dictates that a person who has waited for a visa has precedence over a new applicant for the same type of visa.

5. The increased visa-issuance workload should be phased-in, since present consular posts and INS offices cannot immediately meet the additional workload demands created by the larger number of visas to be issued under the new immigrant admissions system and backlog clearance.

   There are personnel and space constraints on issuing additional visas at almost all consular posts overseas and on adjudicating adjustments of status in all INS offices. Providing substantial new resources to meet additional workload will take at least a year after funding is available.

On implementing the new system

1. The number of numerically limited entrants to the United States during any year should not exceed the number provided for in the new immigrant admissions system.
2. Immediate relatives of U.S. citizens should continue to enter unimpeded.
3. The entire new immigrant admissions system should not be phased in at once; it should be phased in by category or group during a transition period, as backlogs in similar categories of the old system are cleared. An attempt should be made, however, to admit immigrants in all categories as soon as possible.

On admitting the immediate relatives of legalized aliens

Legalized aliens' immediate relatives living outside the United States should not be given special (numerically unlimited) entry status. After legalization, aliens should be allowed to petition for their immediate families under the normal immigration process. If large numbers of persons are involved, however, it may be appropriate for additional visa numbers to be made available for this purpose.

Providing a special status for overseas relatives of legalized aliens would immediately increase immigration significantly and could permit the entry of these persons ahead of backlogged applicants who have waited years for their immigrant visas.

Following these general premises and assumptions the staff developed, in conjunction with experts from the Department of State, a detailed phase-in plan for its earlier proposed immigrant admissions system. Described briefly, this initial plan called for an interim three-year transition period between the current and a new system. During that time immediate relatives and refugees would enter unimpeded. During the first year, backlogs in the current family-reunification preferences being retained--the present second and fourth preferences--would be cleared and new entrants in those groups allowed to enter, including the relatives of legalized aliens as they qualified and as numbers were available. Backlogs in the current third, fifth and sixth preference and nonpreference categories would be cleared during the second and third years. At the beginning of the fourth year, the new immigrant admissions system would have been totally in place and all backlogs from the previous system would have been cleared.

However, as proposals for a new immigrant-admissions system evolved over time, this phase-in plan no longer was applicable because newer systems involved lower numerical ceilings on immigration and more family-reunification preferences. For the final immigrant admissions system, a new, less-structured plan was developed. The Commission provided for a five-year rather than a three-year interim period through the addition of an annual 100,000 visas preferences for the first five years after the initiation of the system to help clear backlogs. All existing preference and nonpreference immigrant visa applicants would have their priority data preserved on a chronological list of aliens awaiting visas.

Seventy percent of the additional 100,000 visas would be allocated to the family-reunification category, with the remaining 30 percent going to the independent immigrant category. Many existing backlogged applicants--who would be first in line for visas--would be able to obtain visas expeditiously under the regular 350,000 ceiling of the new immigrant-admissions system, although preference limits in the family-reunification category and per-country ceilings would hinder some specific groups. The additional 100,000 numbers allocated to facilitate backlog clearance, however, would be available in priority date order, within each category and without regard to preference or place of birth. As such, they would greatly facilitate the entry of backlogged applicants in countries and preferences with heavy demand.

The staff believes that this plan would clear backlogs and implement the new immigration system smoothly and efficiently. However, the transition between immigrant-admissions systems is going to take major administrative and operational efforts, especially on the part of the Department of State and its consular officers who issue immigrant visas throughout the world, and to a lesser extent on the part of the Immigration and Naturalization Service which handles immigrant adjustment-of-status cases in the United States.

Visa issuance would increase substantially, especially during the first five years when the additional 100,000 visas would be made available annually. This increase in workload would not be evenly divided among posts, however. Over three-quarters of the current backlog is in just half a dozen countries and perhaps a dozen consular posts. The huge demands placed on these offices by the clearance of backlogs as well as the provisions of the new immigrant-admissions system would require not only additional personnel but also new space and equipment and innovative planning and operational techniques to accommodate the new workload.

The Proposed Immigrant Admissions System--Who Will Enter

The proposed immigration system would affect the total number and characteristics of persons to be admitted to the United States and its long-term population growth. While it is not difficult to project numbers without regard to characteristics, it is much more difficult to project the characteristics themselves because many assumptions made for the short-term are subject to considerable change, with fluctuation of demand by geographic source and category.

Immigrant--aside from refugee--admissions could be expected to increase under the proposed system, both through the increased numerical ceiling set on annual entries and through the increased admissions of numerically exempt immediate relatives of U.S. citizens. The first factor, the increased numerical ceiling would be raised from 270,000 to 350,000 per year with a five-year period during which the ceiling would be raised to 450,000 to help accommodate backlogged visa applicants.

The numerically exempt immediate-relative category would increase--in the absence of an unlikely drop in demand because of a U.S. depression or other unexpected events--as a result of three primary factors: the addition of the current first preference for married, adult sons and daughters of U.S. citizens (about 5,000 entries a year); the addition of a category for the grandparents of adult U.S. citizens and increased numerically limited immigration. The increase due to the addition of the current first preference would be immediate and would remain at a relatively constant level over time, while that due to the addition of grandparents could be expected to rise suddenly after the enactment of legislation as a large number of previous immigrants--now U.S. citizens--and their children would be able for the first time, to petition for their grandparents. It is anticipated that the demand in this category would later taper off.

The increase due to greater numerically limited immigration would be offset for several years, since the impact could be felt only after increased numbers of immigrants are naturalized, a benefit for which most immigrants are ineligible for the first five years after entry and which most do not obtain for at least six or seven years, if at all. This increase would depend on the rates of naturalization which vary greatly by nationality, a factor which history has shown to be subject to marked change over time.

An increase also will result from the subsequent naturalization of legalized aliens, although this rise may be quite small because of the low naturalization rates among nationals of several of the principle undocumented/illegal alien sending countries. Following enactment of the new system, the annual average of immigrants admitted outside of the numerical limitations might rise in time to 170,000 as a result of these factors, with net migration in this category running at about 119,000 per year.

Changes in the groups which would enter the United States under the proposed immigrant admissions system could also be expected. Substantially more spouses and children of permanent resident aliens would enter, although it is possible that the great demand to enter in this category would subside as backlogs were alleviated and after legalized aliens brought in their immediate families. It is anticipated that the current second-preference backlog of 168,000 could be worked off during the first year or two under the proposed system. The greatest problem in achieving this end is the heavy workload projected for certain consular posts with a high proportion of second-preference applicants, including Mexico which accounts for 41 percent of the second-preference backlog, the Dominican Republic with 12 percent and the Philippines with 11 percent.

Although no one knows how many aliens would be given lawful status under the proposed legalization program, nor how many would have spouses and children outside the United States for whom they would petition, the staff estimates that the number of family members outside of the United States might range from 375,000 to 775,000. This range is based on the assumption that half of an estimated population of 6 million* undocumented/ illegal aliens might qualify under the legalization program, although only half of those potentially eligible--1.5 million--might actually come forward. Based on several studies of apprehended and unapprehended undocumented/ illegal aliens, it is estimated that 40 percent of those granted legal status would be married and that each would have three children, one quarter of whom would be U.S. citizens, and that from 60 to 80 percent of the spouses and noncitizen children would already be resident in the United States.

Although many believe that undocumented/illegal aliens are primarily young, single males, research indicates that those who have been in the United States for longer periods of time and who would therefore be more likely to qualify for legal status, are more likely to be married and to already have their families with them in the United States. For example, Sheldon Maram's study of garment workers in Los Angeles reveals that 36 percent of his sample of undocumented/ illegal aliens were married and 84 percent of the spouses were in the United States. Fifty-six percent of the sample reported having children under the age of eighteen; 77 percent reported that at least one of their children lived with them in the United States. The average number of children of all respondents was 1.4. Therefore, based on these assumptions anywhere from 375,000 to 775,000 spouses and children might be eligible for immigrant status as the spouses and minor, unmarried children of the newly legalized aliens. While admittedly a rough analysis based on less-than-perfect data, the staff believes that the estimated range of derivatives indicates that such persons would in all likelihood number well under one million, probably no more than 500,000. The demand to immigrate among these persons could also be expected to be spread out over several years. Some newly legalized aliens might delay petitioning for their spouses and children because they would not be able initially to show sufficient means of support to enable them to pass the public charge provisions of the law. Others might choose to make regular trips home to visit their familes rather than to bring them here. These factors tend to further suggest that the demand of spouses and minor children of legalized aliens would be able to be satisfied within the established numerical limitations, as planned.

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*The maximum number estimated by Siegel, et. al; see Chapter IX.

The other family group which would be affected considerably by the proposed changes is that of the brothers and sisters of U.S. citizens. Although receiving a large percentage of the visas available to the lower family-reunification preferences, the numbers available to this group would be reduced significantly under the proposed system. Many Commissioners and the staff had hoped to ameliorate this problem by reducing the sibling category to include only the unmarried brothers and sisters of U.S. citizens which would have made the number of visas available more congruent with demand. The result, as recommended by the Commission, however, would be longer waits for siblings to be reunited in the United States. Although unfortunate, the Commission and the staff believe that immigration policy should reunite the closest family members first and that backlogs are more tolerable in lower preferences.

ACTIVE IMMIGRANT VISA APPLICANTS REGISTERED ON JANUARY 1, 1981, BY PREFERENCE

Area or country	Total	First	Second	Third	Fourth	Fifth	Sixth	Nonpreference
Africa	8,754	25	1,195	282	122	5,385	451	1,294
Asia	496,045	885	41,046	16,576	21,564	397,268	8,384	10,322
China	92,895	221	6,592	456	6,917	72,990	2,653	3,066
Hong Kong	9,842	49	3,067	293	442	5,480	307	204
India	36,901	2	2,382	929	77	31,305	560	1,646
Jordan	5,126	7	849	2	141	4,048	46	33
Korea	85,139	31	3,640	202	401	77,762	1,610	1,493
Lebanon	5,397	2	638	17	117	4,053	317	253
Pakistan	5,726	---	604	79	14	4,667	97	265
Philippines	225,746	452	19,273	14,325	13,012	176,403	1,279	1,002
Other Asia	29,273	121	4,003	273	443	20,560	1,515	2,360
Europe	44,746	330	4,317	470	2,543	27,372	2,862	6,852
Great Britain	9,473	87	593	207	404	4,815	885	2,482
Greece	5,108	22	662	10	85	4,050	116	163
Italy	5,555	42	498	14	334	4,196	250	221
Poland	5,241	61	1,014	17	837	2,987	67	258
Portugal	7,305	4	544	2	146	5,895	505	209
Other Europe	12,064	114	1,006	220	737	5,429	1,039	3,519
North America	520,019	4,472	113,278	592	26,027	99,448	10,400	265,802
Canada	7,496	148	537	496	322	1,421	781	3,791
Cuba	21,060	458	1,895	---	2,816	15,516	25	350
Dominican Republic	30,639	225	19,777	---	217	6,030	66	4,324
Haiti	15,705	73	6,426	5	197	8,458	422	124
Jamaica	21,098	256	4,921	13	657	5,120	179	9,952
Mexico	380,191	2,927	69,574	24	20,914	43,978	2,661	240,113
St. Christopher	7,316	18	437	4	28	1,716	3,147	1,966
Other North America	36,514	367	9,711	50	876	17,209	3,119	5,182
Oceania	3,068	15	468	20	160	1,924	126	355
South America	33,298	162	8,223	60	557	20,443	1,647	2,206
Columbia	10,714	32	3,015	4	129	6,670	466	398
Guyana	8,589	26	2,060	6	78	6,111	238	70
Peru	5,060	45	941	11	73	3,715	207	68
Other South America	8,935	59	2,207	39	277	3,974	736	1,670
TOTAL	1,105,930	5,889	168,527	18,000	50,973	551,840	23,870	286,831

Source: State Department, Bureau of Consular Affairs, Visa Office, Unpublished data.

One of the major impacts of the categories of the proposed system would be the increased entry of nonfamily immigrants under the independent category. As already explained, this increase would make immigration policy more equitable, capable of greater selectivity and likely to contribute more to U.S. economic growth without displacing U.S. workers.

Although it is possible to estimate the origin of immigrants who would enter during the first few years under the proposed system, it is difficult to project later shifts in immigration patterns as stated above. With the emphasis on backlog clearance during the first five years after enactment of a new system, the origin of immigrants to a great extent would reflect the composition of currently backlogged applicants, as well as present patterns in those preference categories and countries in which there are no significant backlogs. Legalized aliens also would affect the origin of future immigrants as they bring their immediate families and later naturalize and petition for additional relatives in later years. Although the distribution of undocumented/illegal aliens by country of origin is not known, various studies estimate that about 50 percent are Mexican nationals, about

25 percent come from other Latin American and Caribbean Basin countries and 25 percent are from several Eastern Hemisphere countries. It is also assumed here that the proportion of nonMexicans who apply for legalization would be greater than for Mexicans, but no assumptions are made as to differences in magnitudes.

Overall it is likely that under the new system there would continue to be more diversity in the origin of immigrants. The elimination of country ceilings for spouses and children of permanent resident aliens would increase immigration initially from countries with large second-preference demand, primarily certain Western Hemisphere and Asian countries and would be likely to more than offset the lower per-country ceilings proposed--7,000 in the lower family-reunification preferences and 9,500 in the independent category, for a total of 16,500. The fewer numbers available for brothers and sisters might ultimately reduce immigration from some Asian countries, although the addition of grandparents as a numerially exempt category and the removal of country ceilings for spouses and children of permanent residents would be likely to offset this effect, as might the increased numbers for workers available in the independent category. It is also anticipated that the numbers made available for independent immigration would be used by nationals of many African and European countries, as well as by those of some of the currently more prominant countries of immigration. This new channel might, therefore, be expected to open immigration to new or renewed sources of immigrants, while both it and the family-reunification category would continue to build on the more recent bases of immigration.

Unpredictable changes in the source of refugees who later adjust to immigrant status would alter the patterns of immigration as would a change in demand patterns, as has happened throughout U.S. history. The main purpose of the new immigrant admissions system, however, is to have a policy that will be in the interest of the United States regardless of such changes. The proposed system is one whose structure is designed to implement clear immigration goals without regard to shifting patterns in demand by nationality. It is further a policy which is designed so that it can easily be changed, as necessary, to serve shifting emphases in goals and policy through an annual review of immigration policy in the light of changes in domestic and international affairs.

PART III: THE RULE OF LAW

CHAPTER IX: THE HALF-OPEN DOOR: ILLEGAL MIGRATION TO THE UNITED STATES*

Introduction

The story of undocumented/illegal migration is the story of international pressures, historical circumstances, national policies and socioeconomic impacts. It is also a story in which stereotypes abound and fears mingle with facts. The purpose of this chapter is to sort out the various parts of the story in order to put undocumented/illegal migration into perspective.

Although there are general patterns that will be discussed in this chapter, there are also individual stories that should not be forgotten:

> I came from a far area to go through the bridge to Buffalo. I pay $500 to youth gang in Toronto. They give me a map and tell me the procedure and the time and how to go through the border and what to avoid and how to get to Buffalo Amtrak station. If I could afford to pay them up to $1,000 or $1,500, they would drive me right to the Chinatown in New York City. [To do business there] I would have to check it out with a tong, you know, the

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*Susan S. Forbes, author.

association, and see how much I could contribute into them each week or each month. . . . I have to pay them to find a good location, in order to keep my business going. [If I do not pay,] they could always come to throw away my merchandise, or come to, you know, making trouble meanwhile I'm dealing with a customer, or they could always, you know, making trouble for family, if they know where I live.

--Letter from Anonymous Undocumented/Illegal Alien[1]

You see, I was working at an early age. That's the custom in Mexico. When I reached ten, my father took me out of school so that I could help with the work on the family [farm]. . . . When my younger brothers could help with the farm work, then my father sent me to work at harvest time in other states of Mexico during those months when there wasn't anything to do on the [family farm] except pray for rain.

Julio and I were then about age eighteen, that was in 1968. We crossed the river a little way north of Eagle Pass, and walked mostly at night. It was early in May and not cold. . . . We kept in sight of telephone poles leading east. At dawn we came to a house of a Texas Mexican who worked for a rancher there. . . . We got food and water, paying in Mexican money. We slept on the floor of the house, and walked two more nights, sleeping out. All I could think of was stepping on a rattlesnake in the dark. By day we camped under trees and watched a border patrol plane circle around. . . . Finally our path led to the low hills west of San Antonio. There we went to work for a gringo contractor who was building fancy houses. . . . One day when I had about a hundred dollars safely stuffed in a tin can, Julio said, "we got a nice pile, let's go to San Antonio. . . . One of the [other] workers had a car, and he took [us] to the city. Maybe he wanted to get rid of us, because he let us off at the bus station to look up the name and the address of Julio's relatives in a phone book. We were about to call the house when two immigration men came up and began asking questions. They arrested us on the spot, and pretty soon we signed a paper. They took us to the border and turned us loose at Nuevo Laredo, for we said we lived there. . . . That night we paid about five dollars each to be taken across the river in a flat boat just a few hundred meters from where the bridge crosses to Laredo. It was about ten at night, and simple. There was no fence, and no guards.

--Jose Policarpio Martinez[2]

These two undocumented/illegal aliens tell a familiar story. Determined to migrate to the United States they were prepared to face hardships and risks--long distances to be traveled by night, rattlesnakes, smugglers, the possibility of arrest and deportation and living in an underground culture without legal protection. For these two migrants, the gamble paid off, but not all undocumented/illegal aliens have been as fortunate. During the past year, 13 Salvadoreans in a widely publicized case died while trying to cross unfamiliar desert terrain after being abandoned by their guide, and in another case, 22 Dominicans died in the hold of their boat while trying to cross the sea. Yet, despite the dangers, undocumented/illegal migration continues.

For most undocumented/illegal aliens, the benefits of a sojourn in the United States far outweigh the risks. Today, aliens from almost every major nation in the world seek to enter or remain in this country illegally. Some come as non-immigrant aliens, such as tourists and students, with valid visas; others enter with counterfeit, altered or borrowed documents. They come in leaky boats to the southeastern shore of the United States or cross U.S. northern and southern land borders.

Undocumented/illegal migration, as the history of Chinese migration shows, has always occurred when legal migration patterns were suddenly interrupted by new restrictions. From 1850 until 1882, when the Chinese Exclusion Act went into effect, more than 322,000 Chinese, including reentrants, entered the United States. The overwhelming majority were unskilled laborers, many of whom had money for passage advanced, agreeing to work out the debt after arrival. Others signed contracts agreeing to work for a specified time in return for passage. The Chinese also swelled the numbers of miners who sought gold in California in the 1850s, (although in 1852 the state legislature reenacted the Foreign Miners' Tax Law, directed two years earlier against Mexican miners and then against the Chinese). Further, they constituted the major portion of the labor force in the construction of the Central-Pacific portion of the transcontinental railroad completed in 1869, and worked on many other railroads as well. By 1880, more than 105,000 Chinese workers were in the United States, most of them in California. They accounted for more than a third of California's truck gardeners, 70 to 80 percent of the woolen mill workers and 90 percent of the cigarmakers in San Francisco and a majority of that city's shoemakers and garmentmakers.[3]

Difficult economic times in the 1870s gave impetus to a growing anti-Chinese movement, and a joint congressional committee in 1876 issued a report recommending curtailment of immigration from China. As long as California remained short of labor, large-scale employers resisted such actions, but by the early 1880s, opposition to Chinese immigration had grown so strong that an act was passed in 1882 to exclude Chinese laborers--not teachers, officials, students or merchants--for ten years. The exclusion was renewed for six decades (1880-1943) sharply curtailing legal Chinese immigration to the United States.

Prior to the Chinese Exclusion Act there was no need for an immigration border control of any kind, and the federal government assumed no responsibility for regulating the entry of aliens. Migration across U.S. land borders went unexamined and unrecorded for many years. Although an act was passed in 1819 requiring a captain or master of a vessel arriving from abroad to compile a list of all passengers and to designate the age, sex and occupation of each, aliens who crossed land borders were not included in this provision. But along with the 1882 act excluding Chinese, legislation was passed establishing central control over immigration.

Illegal migration made it necessary to establish the Bureau of Immigration in 1891, with inspection stations at ports of entry along the coasts and the Canadian and Mexican borders. In 1904, 14 persons were hired to ride the border between California and Mexico specifically to prevent the smuggling of Chinese, since the law did not require the inspection and numeration of others crossing until 1907. One man, given the title of Mounted Chinese Inspector, patrolled the Arizona-Mexico border, concentrating on trails that were used by alien and U.S. smugglers. On one occasion, he found 16 Chinese aliens in a ditch who had been abandoned by a smuggler who made it a practice to tie the hands of those he smuggled should it become necessary to leave them in the desert.[4]

After the 1906 earthquake in San Francisco destroyed almost all the official birth records, many Chinese had an opportunity to claim U.S. citizenship by stating they had been born in San Francisco but their records had been destroyed. Other Chinese living abroad then claimed to be the families of these native-born citizens. These individuals were subsequently able to enter the United States because U.S. courts had affirmed the right of derivative citizenship for foreign-born minor children of native-born Chinese. This right to citizenship resulted in a slot system under which Chinese Americans returning from China falsely reported the birth of children, usually sons, to the authorities. Prospective Chinese immigrants were then assigned or sold these slots or papers. This system of illegal entry became so widespread that the immigration authorities adopted extremely detailed interrogatory procedures in processing Chinese applicants for citizenship, detaining them in isolation, sometimes for as long as a month, until immigration officials could rule on their admissibility.

The motivation to survive, earn money and provide for one's family was too great to be stopped entirely by exclusion laws. The chains of migration that had been built up over the years by families from certain sections of South China were powerful. Even the frequently abusive reactions of immigration authorities--sometimes leading to great injustices against those who were inadmissible to the United States--could not stop the illegal entry of aliens who had already come great distances under severe emotional and physical privation.

Although it was hard to curb the illegal Chinese immigration which came through Angel Island in San Francisco and Ellis Island Island in New York, it was particularly difficult to prevent illegal migration across U.S. land borders, especially to the south where historical circumstances had encouraged a free movement of people between the United States and Mexico for generations.* Large areas of the southwestern United States were, of course, part of Mexico until the mid-nineteenth century. These areas were generally underpopulated, but had land resources that tempted many prospective settlers from across the border.

Newcomers, entering through this back door, were, at first, welcomed, but many established residents soon regretted their hospitality. One official complained that "illegal" aliens "advance more and more in their design to destroy our political system and deprive us of our native country." For their part, spokesmen for the new settlers answered that "they cannot be expelled from the country, nor must their expulsion be attempted! What consummate folly it is for the natives of the Californias to attempt to check the emigraton to this country. They might just as well attempt to arrest the thundering wheel of time, to restrain the mighty water's flow, or to extinguish the blazing light of civil and religious liberty!"[5] In this case, it should be noted, the undocumented/illegal immigrants were citizens of the United States and their ambivalent hosts were Mexican nationals. The incident serves to illustrate not only the long history of illegal immigration across the southern border, but also the temptation that has faced nationals of both countries.

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*Studies now indicate that Mexicans account for about 50 percent of the current undocumented/illegal migration. During the first half of the twentieth century, however, Mexicans were believed to heavily dominate undocumented/illegal migration.

With the annexation of Texas in 1845, the Treaty of Guadalupe Hildalgo in 1848 and the Gadsen Purchase in 1854, the United States established its sovereignty over a vast territory with an existing Hispanic population.* The Mexicans who decided to remain after acquisition had the choice of retaining Mexican citizenship or becoming U.S. citizens without forfeiting the rights to their property or the freedom to practice their religion. This Mexican community remained relatively small throughout the nineteenth centruy, growing mainly as a result of natural increases in population rather than immigration. The lands near the Mexican border, mostly desert and plain with the exception of parts of California and Texas, were themselves inhospitable to settlement, while the terrain of the routes from Mexico to these territories made any type of travel difficult. By the end of the century, however, technological innovations had conquered many of the obstacles to migration. Railroads made travel easier, and agricultural irrigation made many more jobs available in the Southwest.[6]

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*Under the Treaty of Guadalupe Hildago, following the war with Mexico, the United States came into possession of about one-third of Mexico's territory, including California, and not including Texas. The Gadsen Purchase annexed another 30,000 square miles in what is now Arizona and New Mexico.

At the same time, a growing differential in wages between Mexico and the United States and a high level of inflation in Mexico, made migration all the more attractive. In addition, a growing amount of internal migration in Mexico paved the way for movement across the border. The first serious student of Mexican migration, Victor S. Clark, writing in 1908, suggested that Mexicans migrating to Texas "come largely from the migratory labor class of their own country."[7] The development of mining and industry in northern Mexico was attracting settlers from the southern part of the country; these internal migrants often gained skills that they could later convert into higher wages in the United States. Some worked for U.S.-owned mines in Mexico, and there became familiar with opportunities and customs that prevailed north of the border.

Between 1900 and 1930 over 700,000 Mexican immigrants were legally admitted to the United States. Many thousands more entered without inspection or the permission of U.S. authorities. Two historians estimate that more than one million undocumented Mexicans may have settled in the United States during this period.[8] Some came into the country illegally because they were unfamiliar with U.S. regulations; others wished to avoid the expense of a visa and head tax. Many were recruited by labor contractors, some of whom openly advertised in border towns despite the restrictions on recruitment in the Alien Contract Labor Law of 1885. Since it was not illegal to sign contracts with workers on the U.S. side of the border, most recruiters waited until the aliens crossed the border before hiring them. The Mexicans, for their part, became familiar with and adapted themselves to these practices. According to Clark's 1908 study, Mexican migrants "appear at the border in sombrero, serape, and sandals, which, before crossing the river, they usually exchange for a suit of 'American' clothing, shoes, and a less conspicuous hat. In fact, at Juárez and at El Paso a thriving trade of old clothes has sprung up to meet this demand."[9]

During the financial-boom days of the 1920s, most U.S. citizens were indifferent to the immigration of Mexicans, whatever their legal status. Some official steps were taken, though, during this period to control illegal entry. In 1924 the Border Patrol was formed in the Immigration and Naturalization Service to police both the Mexican and Canadian borders. During the next several years, funding and personnel increases for the Border Patrol were matched by increases in the numbers of aliens apprehended trying to enter the country. In 1925, 4,641 smuggled aliens were apprehended, while in 1929, over 29,000 were captured. During the same decade, the numbers of deportations also increased, from 2,762 in 1920 to 12,908 in 1929.[10]

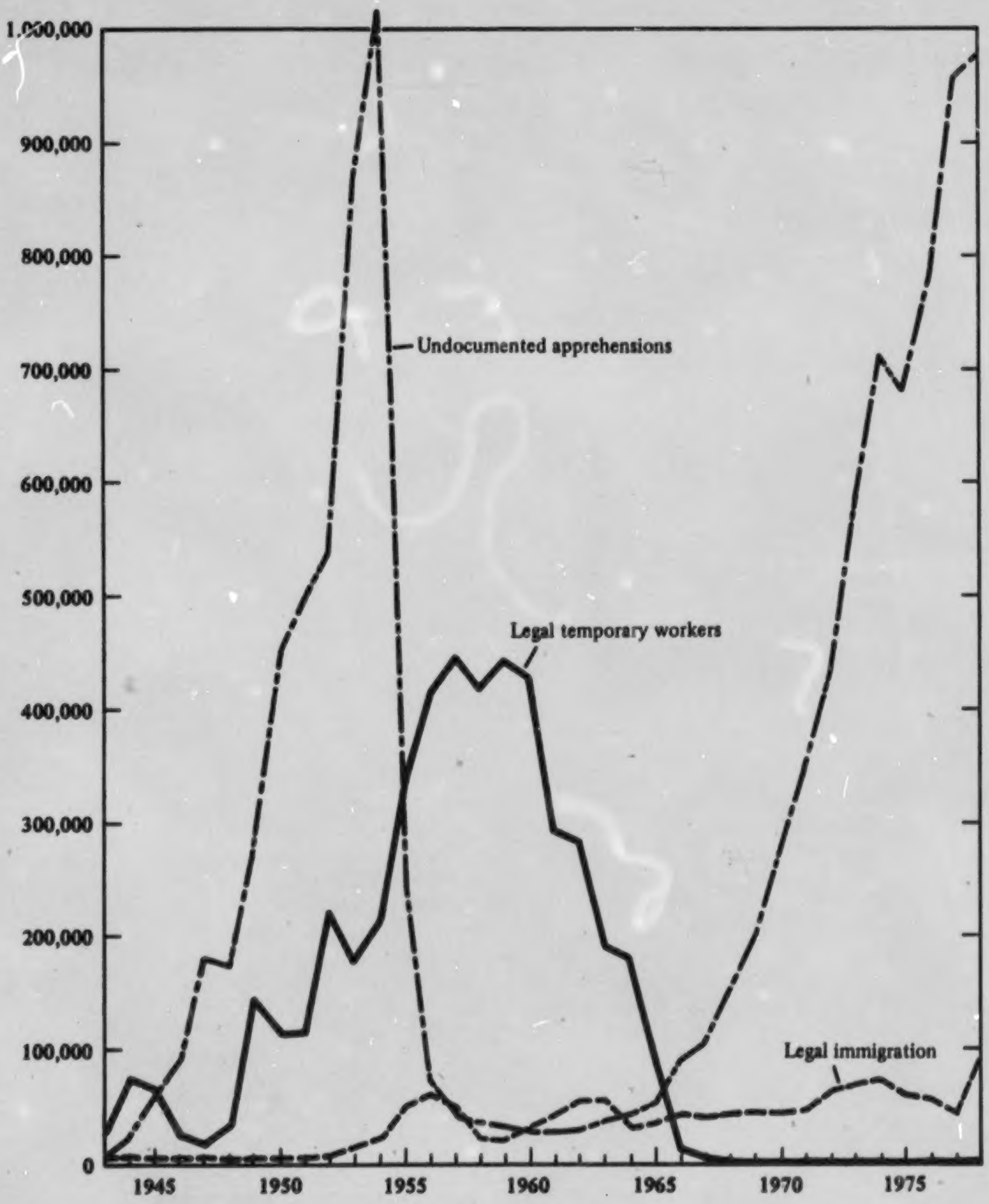
Despite these efforts aimed at controlling entry, undocumented/ illegal migration was not seen as a very pressing issue during the 1920s. It was not until the Great Depression, beginning in 1929, that this nation actually attempted to change the pattern of undocumented migration from Mexico. Faced with high unemployment, the United States sought to reduce the numbers of those competing for scarce jobs by repatriating aliens, even those with proper documentation. Through pressure applied by both U.S. and Mexican officials, Mexicans were encouraged to return home. About 500,000 persons were repatriated to Mexico, including legal immigrants and U.S.-born relatives of those who had entered illegally. These efforts, combined with the scarcity of U.S. jobs, substantially reduced not only the undocumented flow but also legal migration from Mexico.

With the U.S. entry into World War II, however, the number of available jobs increased and Mexican workers were again sought after. In 1942, an agreement was reached between the U.S. Department of State and the Government of Mexico to permit the entry of temporary agricultural workers.[11] The following year agreements were also negotiated for the importation of nonagricultural laborers to work in industries and services essential to the war effort. Similar agreements were also made for the importation of temporary workers from British Honduras, Jamaica, Barbados and the British West Indies. During the war and in the first two years of peacetime, the United States admitted over 300,000 foreign, temporary agricultural workers as part of the bracero program with Mexico. Although the program was begun in order to fill wartime personnel shortages, it continued and thrived long after the war was over. From 1942 to the end of the program in 1965, between four and five million temporary worker were admitted.

The supporters of the bracero program on both sides of the border claimed that it would serve two purposes. It would fulfill the needs of U.S. employers for workers, and it would also decrease some of the pressures for undocumented/illegal migration. Such hopes were not fulfilled, though. In the years immediately following the war, the numbers of undocumented/illegal aliens apprehended increased dramatically. In 1946, 99,591 were apprehended; the number increased to 528,815 in 1952. The Immigration and Naturalization Service claimed that the majority of apprehensions were of Mexicans coming to engage in agricultural work[12] (see table on "Mexican Migration to the United States, 1943-1978").

The bracero program actually encouraged rather than stopped the illegal movement. Otey Scruggs, an historian, has noted that "the bracero program, instead of diverting the flow of wetbacks into legal channels, as Mexican officials had hoped, actually stimulated unlawful emigration."[13] A study prepared by the Congressional Research Service for the Select Commission suggested that the bracero program attracted workers northward in greater numbers than could be accommodated by the legal flow.[14] Further, illegal entry was encouraged by many U.S. employers who disliked the regulations required under the formal contracts of the program.

MEXICAN MIGRATION TO THE UNITED STATES
1943-1978



SOURCE: U.S. Immigration and Naturalization Service, Annual Reports.

In 1947, at the instigation of the Mexican government, efforts were begun to legalize undocumented workers by putting them under bracero program contracts. But on their own, these efforts did little to curb new entry. In 1951, the President's Commission on Migratory Labor described illegal entry as "the dominant feature of the Mexican alien farm labor program."[15] The Truman Administration, not wanting to end the bracero program, subsequently called for measures that would more directly address the issue of illegal migration, and tied a newly negotiated agreement with Mexico to the passage of these measures by limiting the agreement to a six-month period.

President Truman wrote to the President of Mexico that he hoped that the latter would accept the six-month agreement because

> that would allow time for further action by the United States Congress, and if this action were not forthcoming, a further renewal of the agreement could be postponed. I make this suggestion because I feel so strongly that the people of both Mexico and the United States have much to gain if this illegal immigration can be brought to an end. The Mexican citizens who come here legally to do farm work on contract would surely benefit just as would our own citizens who are working as farm laborers.[16]

In a special message to Congress in 1951, on the occasion of the enactment of the law that in effect renewed the bracero program, President Truman called for legislation providing a penalty for harboring or concealing aliens who had entered the country illegally; legislation establishing the authority of INS personnel to inspect places of employment without a warrant, where they had reason to believe undocumented/illegal aliens were working or residing; a supplemental appropriation for the INS to expand its enforcement personnel in the Southwest and an increase in the Labor Department's Farm Placement Service.[17]

Efforts to enact these laws met with partial success. Under legislation that became the Immigration and Nationality Act of 1952, the willful importation, transportation, or harboring of undocumented/illegal aliens was made a felony, punishable by a $2,000 fine or imprisonment of up to five years, or both. An amendment proposed by Senator Paul Douglas of Illinois provided penalties for the employment of undocumented/illegal aliens if the employer had "reasonable grounds to believe a worker was not legally in the United States." This attempt to impose employer sanctions was defeated, however. In fact, employment was specifically exempted from the penalties for harboring by what is now called the Texas Proviso.[18]

With the new immigration law in effect, attention turned to enforcement. It soon became apparent, however, that the Border Patrol was severely underfunded and had too little personnel to do its job effectively. In August 1953, Attorney General Herbert Brownell, after a visit to the California border, characterized previous decisions to cut Border Patrol funding as "the most penny-wise and pound-foolish policy I've ever seen."[19] A reversal of policy followed, and the Border Patrol was increased.

In 1954, General Joseph May Swing was appointed Commissioner of the Immigration and Naturalization Service, and a decision was made within the Executive Branch to mount a major effort, under his leadership, to bring illegal immigration to a halt. Dubbed "Operation Wetback," this program aimed at the deportation of undocumented/illegal aliens. It was described at length in the 1955 INS Annual Report as a paramilitary operation:

> A "Special Mobile Force Operation" began in California, . . . and after the backbone of the wetback invasion was broken [there], shifted to south Texas. Light planes were used in locating illegal aliens and directing ground teams in jeeps to effect apprehensions. Transport planes were used to airlift aliens to staging areas for prompt return to Mexico. . . . These activities were followed by mopping up operations in the interior and special mobile force units are continuing to discover illegal aliens who have eluded initial sweeps through such cities as Spokane, Chicago, Kansas City, and St. Louis.[20]

With the departure of over one million aliens from the United States during Operation Wetback, the Immigration Service concluded that "the so-called 'wetback' problem no longer exists. . . . The border hs been secured."[21] Their success in locating and removing so many aliens from the United States--many from the interior of the country--was accompanied, however, by major costs. The most serious was a disregard for the rights of many of those apprehended, some of whom were legal residents and others of whom were U.S. citizens mistaken for aliens. This violation of rights caused disruptions that resulted in considerable human suffering.

The 1950s campaign to reduce illegal migration was also aided by changes in the nature and size of the bracero program that reduced the protections offered to workers but also increased employer willingness not only to hire bracero workers but also to cooperate with enforcement officials. The changes in the bracero program, including for a time unilateral recruitment when the Mexican government did not sign a new agreement, often resulted in adverse impacts upon domestic workers. The preference of employers for the often more compliant bracero workers who usually were willing to work for lower wages deprived some domestic workers of jobs and kept wages so low that the jobs themselves became undesirable. As a Congressional Research Service report concludes:

> History appears to indicate that the bracero program only served to reduce illegal migration when it was combined with both a massive law enforcement effort ("Operation Wetback") and an expansion of the farm labor program to the point where it almost certainly had an adverse impact on the wages and working conditions of domestic workers in certain "dominated" areas and occupations.[22]

The price of curbing illegal migration through the combination of Operation Wetback and the bracero program was too high, however. This phase of U.S. policy officially came to an end when, in 1965, despite the desire of the Mexican government for its continuation, the bracero program was disbanded.

The demise of the bracero program is often cited as a prime reason for the rise in illegal migration during the next decades. The elimination of this legal channel of temporary immigration meant that those who had become used to a particular pattern of employment had to find other means of entry into the United States. According to Vernon Briggs, though, to draw a causal relationship may be too simplistic:

> Undoubtedly, many of these illegal aliens were former braceros. They had been attracted to the Mexican border towns from the rural interior of central and northern Mexico by the existence of the former contract labor program. To this degree, there is some truth to the proposition that the United States itself has created the illegal alien problem. By the same token, however, it is simplistic to conclude that the problem would not eventually have surfaced in the absence of the Bracero Program.[23]

Further, the dissolution of the bracero program does not help explain the undocumented/illegal migration from countries other than Mexico and those comprising the former British West Indies. Other factors have certainly been at work during the past decades.

Characteristics of Current Undocumented/Illegal Migration

Data about undocumented/illegal migration are by definition difficult to collect. As members of an underground population that is without protection of law, undocumented/illegal aliens are generally afraid to identify themselves, even if they are only being asked for information. Most of the existing studies of these individuals are therefore flawed. In the absence of any opportunity to examine systematically or even count the entire population of undocumented/illegal aliens, researchers must use small samples. Further, these samples are not randomly drawn. Four major types of samples (see table on "Sample Characteristics of Major Studies of Undocumented/Illegal Aliens) fill the research done on undocumented/illegal migrants:

- Apprehended undocumented/illegal aliens, most of whom are Mexicans who cross the southern border without inspection and are caught within a short time of entry;*
- Undocumented/illegal aliens interviewed at counseling centers, most of whom have been there for extended periods and seek services because they want to stay in this country;
- Undocumented/illegal aliens interviewed at places of employment in industries known to have large numbers of foreign workers; and
- Undocumented/illegal aliens who, having resided temporarily in the United States, are interviewed in their home countries.

Each of these samples has its own biases, and each examines a very specific cross-section of the undocumented/illegal alien population.

The most difficult research decision that had to be made by the Select Commission concerned undocumented/illegal aliens and the advisability of investing only in primary research on that topic. Some Commissioners, staff members and a large number of qualified researchers argued for the importance of such research, especially on the economic charcteristics and impact of undocumented/illegal migrants. The senior staff of the Commission believed, however, that it would be impossible to obtain representative samples which would provide reliable information that would further our understanding of the problem. Instead the decision was made to concentrate on available studies, to seek additional information at public hearings throughout the country and to bring together a range of experts at consultations held by the Select Commission in Washington, D.C.*

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*Stratified samples have been drawn to decrease the proportion of Mexicans.

The decision not to invest a substantial amount of money in new research on undocumented/illegal aliens does not mean the Commission was unaware of the important need for such studies. In fact, one of the Select Commission's strongest arguments in support of the legalization of undocumented/illegal aliens is the new information that will come to light when legalized aliens will be able to come forward and participate in studies. New and accurate information about the origins of migration and the characteristics of migrants will not only help the United States target enforcement resources, it will also enable this country to work with major sending countries in targeting aid and investment programs to deal with migration pressures at the source. Until such information can be collected, however, the fragmentary data resources now available will have to suffice.

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*The exception to this decision was the commission of a report by Guy Poitras on return migrants from El Salvador and Costa Rica, two countries known to contribute considerable numbers of undocumented/illegal aliens.

Numbers and Geographic Distribution

Direct counting of undocumented/illegal aliens is an impossibility at the present time since the population to be counted is clandestine. In the absence of actual measures of size, researchers must rely on indirect techniques that give an idea of the possible magnitude of the population through estimation. The Select Commission asked three demographers at the U.S. Bureau of the Census--Jacob S. Siegel, Jeffrey S. Passel and J. Gregory Robinson--to review the existing literature on numbers of undocumented/illegal aliens and to provide an estimate of how many are now resident in this country. The severe limitations of all the studies on numbers as a result of the unavailability of data is evident from their report.* Some estimates are speculative, relying in some cases on the field experiences of the calculators (Chapman, 1976; Castillo, 1978) and in other cases on suspect methodology (Lesko Associates, 1975). Even studies using sophisticated demographic analysis, though somewhat more reliable, are still subject to serious methodological shortcomings, particularly in determining the representatives of the samples and the adequacy of the assumptions used (Lancaster and Scheuren, 1978; Robinson, 1979; Heer, 1979; CENIET, 1979). The authors judged the overall situation as follows:

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*The literature review presented by Siegel, Passel and Robinson has been criticized by two research associates of Centro Nacional de Informacion y Estadisticas del Trabajo (CENIET), Manual Garcia y Griego and Carlos H. Zazueta, in a paper entitled "Approaches to the Estimation of Deportable Mexicans in the United States: Conjecture or Empirical Measurement?" They conclude: "Perhaps our strongest objection to the paper written by Siegel is not based on their critique of our work --even if we think it missed the point--but on our perception that they ignore the issue of relative weights to evidence and conjecture. First, they discuss conjectural estimates in one breath and analytic estimates in the next as if they should be placed on the same plane. . . . Secondly, their rejection of the empirical results of the analytical studies seems to be based on the assumption that the results are too low (emphasis theirs)." (p.162)

> . . . there are currently no reliable estimates of the number of illegal residents in the country or of the net volume of illegal immigration to the United States in any recent past period. Even if we disregard the more conjectural of the estimates of illegal residents . . ., we cannot confidently accept the results of the analytic and empirical studies. They characteristically depend on broad untested assumptions and are subject to other major limitations. . . . Often alternative reasonable assumptions could be employed which could substantially modify the estimates and could produce an impracticably wide range.[24]

Despite these serious shortcomings in the existing literature, the authors were able to make some educated inferences from the available studies. They concluded that "the total number of illegal residents in the United States for some recent year, such as 1978, is almost certainly below 6.0 million, and may be substantially less, possibly only 3.5 to 5.0 million."[25] In his review of the same literature, demographer Charles B. Keely comes to a similar conclusion: "What has emerged is a picture of a resident illegal migrant population smaller than usually believed to be the case. The more recent analyses, using demographic methods, conclude the number of illegal migrants around 1973-75 to be in the lower end of the 4 to 12 million range used by former INS Commissioner Leonard Chapman."[26]

Siegel, Passel and Robinson also argue that, contrary to popular assumptions, the Mexican component of the undocumented/illegal alien resident population "is almost certainly less than 3.0 million, and may be substantially less, possibly only 1.5 to 2.5 million."[27] The majority of Mexican undocumented/illegal aliens are believed to come from five States--Guanajuato, Jalisco, Michoacan, San Luis Potosi, and Zacatecas --in central Mexico and the border state of Chihuahua*[28] (see table on "Sample Characteristics of Major Studies of Undocumented/Illegal Aliens"). The remaining undocumented/illegal aliens, a larger number than commonly believed, mainly come from other parts of Latin America, the Caribbean basin and parts of Asia, particularly the Philippines.

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*Siegal et al. use this information about geographic origins in combination with data about demographic composition (see next section) to make their estimates of the size of the undocumented/illegal population. They argue: "If we assume arguendo that 4.0 million Mexicans were living illegally in the United States in 1975 and that 75 percent of them were young adult males and if, further, we assume that 60 percent of the Mexican illegals came from the six Mexican States noted, as would be suggested by the available studies, we arrive at an 'estimate' of 1.8 million young adult male illegals from the six States (4 million x 75 percent x 60 percent). This figure implies that two-thirds (1.8 million compared to 2.7 million) of the young adult male population of these States has moved to the United States. There is no evidence of this kind of labor shortage in Mexico and we are led to reject an estimate of 4 million Mexican illegals as being much too high." (pp. 15 to 16)

It is generally believed, though not substantiated by empirical data, that Mexican undocumented/illegal aliens tend to go to areas of the southwestern United States, while non-Mexican undocumented/illegal aliens usually settle in the urban areas of the Midwest and East. Legal immigrants of the same national origins also settle in these locations and researchers generally assume--and apprehension statistics tend to support their assumptions--that the geographic distribution of the undocumented/illegal alien population is similar to that of the legal.

There is evidence, though, that there is an increasing propensity among Mexican migrants--especially those from urban areas in Mexico--to seek jobs in urban areas in the United States. According to Ronald Grennes reporting at a Select Commission hearing on his research:

> . . . in Mexico, during the 30-year period 1950-1979, due to rapid economic development and industrialization, an internal migration characterized by a tremendous exodus from rural to urban areas has dramatically altered the demographic shape of Mexico. . . . Since the 1960s, steady accretions of illegal Mexican migrants to many cities in the United States have resulted in the establishment of sizeable clusters of durable semipermanent and permanent residents stretching in interconnecting links between urban sending communities in Mexico and urban receiving communities in the United States."[29]

With increasing urbanization in sending countries, then, the geographic destination of undocumented/illegal migrants appears to shift away from agricultural areas toward cities.

Demographic Profile

A general demographic profile of this population has been developed from the various studies of undocumented/illegal aliens, with some qualifications to be described below (see table on "Demographic Characteristics of Undocumented/Illegal Aliens"). The profiled undocumented/illegal alien is believed to be predominantly male, young (between the ages of 15 and 45) and as likely to be married as unmarried. This general profile, derived mostly from samples of Mexican migrants, has received widespread acceptance, as can be seen in the brief descriptions offered in two recent papers. Harry E. Cross and James A. Sandos describe the profile as follows: "The illegal group is overwhelmingly male and young. Average age falls in the mid-twenties. Perhaps half of these migrants are married and those who are support four or five dependents in Mexico."[30] Siegel, Passel and Robinson write: "The various studies . . . indicate that most of the illegal migrants [from Mexico] are young adult males (e.g., aged 15 through 44), showing about 75 percent in this category."[31]

Although there appears to be little disagreement with the general outline of this profile, researchers have been seeking new data sources in order to refine the demographic picture, especially by considering the characteristics of non-Mexicans. Some recent studies, for example, have indicated that women account for a higher share of undocumented/illegal migration than has been believed. Although the David S. North and Marion F. Houstoun study, The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study, indicated that women account for a higher share of undocumented/illegal migraiton than has been believed, the authors argued that these statistics tend to underestimate the true extent of female migration. These statistics are often derived from apprehension data that overemphasize the presence of Mexican nationals who enter without inspection and who are immediately apprehended at or near the border. Studies of interior apprehensions and of return migrants to Mexico show slightly higher rates of female activity though by no means an equal distribution of men and women. Christine Davidson, of the INS Statistics Division, in a study that concentrates on interior (non-Border Patrol) apprehensions that take place at least several days after entry, found that in her sample--in which over 80 percent were Mexicans and almost 80 percent entered without inspection--17 percent were women.[32] Josh Reichert and Douglas Massey, in a study of legal and illegal migration from the city of Guadalupe in Mexico, discovered a somewhat larger-than-expected participation of women in the movement of migrants, legal and illegal. Women accounted for roughly 44 percent of the legal migration from this town and 19 percent of the illegal migration.[33]

Most studies that look at non-Mexican undocumented/illegal aliens show a higher proportion of women. Poitras said of his sample of return migrants, "the large minority (45.2 percent) of females within the Salvadoran sample challenges the oft-cited premise in the Mexican research that the illegal worker is usually a young male."[34] A higher proportion of fraudulent entrants--visa abusers or those with fraudulent documents--also appear to be women. The Immigration and Naturalization Service's "Fraudulent Entrants Study," in which all but 14 percent of the sample were non-Mexicans--revealed that women accounted for 55 percent of malafide applicants for admission at the 12 largest ports of entry along the southern land border and 44 percent of fraudulent entrants at the ten major international airports.*[35] Women entrants, on the whole, were more likely than men to carry legitimate documents while intending to violate the terms of admission, usually by seeking employment.

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*A significantly higher number of European men than women (25 percent and 7 percent, respectively) tried such entry.

A higher proportion of long-term undocumented/illegal residents--whatever the nationality--are also women. For example, Maurice D. Van Arsdol's sample of never-apprehended migrants in Los Angeles who wished to adjust their status to permanent resident alien showed a distribution of 57.4 percent male and 42.6 percent female. In the Mexican-origin population--which accounted for all but 211 of the 2,845 in the sample--41.9 percent were women, while 49.5 percent of the other Hispanics in the sample were women. The male/female distribution of his sample of previously apprehended migrants, it should be noted, reveals a different pattern from the one described above. Among the apprehended, 82.5 percent were male and only 17.7 percent were female.[36]

The reason so few women appear in apprehension statistics is unclear. The lower percentage of INS apprehensions in part occurs because most apprehensions are of persons who enter without inspection and women seem to be less likely to enter in this fashion. Because INS enforcement efforts are heavily focused on the southern border, apprehension statistics tend to include a disproportionately large number of Mexicans, and, as many studies have indicated,* proportionately fewer Mexican female than Mexican male undocumented/illegal aliens seem to enter the United States. INS practices also contribute to the low numbers: INS interior enforcement efforts, for example, are often aimed at places in which males congregate. Further, knowing that there are not enough detention facilities for women, INS officers may avoid the problems of placing female detainees by not apprehending them.

To summarize:

- The majority of all undocumented/illegal aliens appear to be male.
- A significantly higher proportion of apprehended undocumented/illegal migrants are men. This is reflected in both INS apprehension data and other studies.

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*The "Fraudulent Entrant Study" which examined denials of entry at border ports of entry found a higher proportion of women (55 percent) attempting illegal entry than is measured by INS apprehensions along the southern border.

- A significantly higher proportion of Mexican undocumented/illegal aliens appear to be men. This is reflected in both INS apprehension data and in studies of return migrants in Mexico. Other nationalities show a more even distribution between men and women.
- An approximately equal number of men and women are found among fraudulent entrants.
- An approximately equal number of men and women are found among long-term residents who wish to adjust their status, except among those who have previously been apprehended by the Immigration and Naturalization Service.

Motivations for Migration

Employment is the primary goal of the undocumented/illegal migrant. All studies demonstrate that U.S. economic opportunity is the magnet that attracts those who enter this country illegally, regardless of their nationality or gender. Statistical evidence gives an idea of the universality of the economic motivation. In North and Houstoun's sample of apprehended migrants, 74.2 percent said that they came to find a job. In Cornelius's study of Mexican undocumented/illegal workers from Jalisco, Mexico, 77 percent cited the need to increase their earnings through U.S. employment; another 9 percent cited lack of employment in Mexico.[37] In some cases, the proportion who stated intention is not as high as those who actually worked. For example, 56.4 percent and 62.5 percent of a sample of return migrants from Costa Rica and El Salvador, respectively, gave work as their primary motivation for coming to the United States, a "conservative indication of migration intention," since over 90 percent actually held jobs.[38]

Although almost all undocumented/illegal migrants come to the United States to work, the goal of employment has different meanings in different cases. Many undocumented/illegal aliens have had steady but low-paying jobs in the labor markets of their own countries, but most have been affected by high levels of unemployment and underemployment and have therefore had intermittent work experiences. Again, evidence from studies of undocumented/illegal aliens from a variety of countries illustrates this point. Cornelius' study of Mexicans showed:

> Only 6 percent of the most recent illegal migrants had been unemployed in their home community just before they went to the United States for the first time. But another 18.5 percent lacked remunerated work: They were simply helping their father on the family farm plot or in the family business, without salary. Nearly half of the agricultural workers in my sample had only six or fewer months of work per year, mostly during the rainy season. Even among those employed in commerce and services, underemployment was a problem for more than one out of five workers."[39]

The North-Houstoun study of apprehended migrants revealed that, on average, 10.2 percent of the sample were both without jobs and looking for work during the period 1970 through 1975. Those who had been employed in their country of origin were likely to have been blue collar workers (41.5 percent) or farmworkers (35.7 percent).[40]

In a study of undocumented/illegal aliens in New York, almost 30 percent of a sample from the Dominican Republic described themselves as unemployed in their home country, with another 47 percent not specifying employment status.[41] Among Haitians sampled in the same study, 37 percent were unemployed and 18.5 percent specified no occupation. The author of the study also noted, however, that "educationally and in terms of labor force experience in their home country, they are at a higher level than one would normally expect. They are more educated and have white collar experience, although they go into blue collar and service jobs in New York" [42] (see table on "Labor Market Experiences of Undocumented/Illegal Aliens).

A sample of return migrants from El Salvador and Costa Rica also showed similar characteristics. In this case, unemployment was not the precipitating factor in illegal migration. About 40 percent of the Salvadoreans and half of the Costa

Ricans had been employed in high-status professional and skilled white collar jobs in their home countries. They were generally attracted by the financial opportunities afforded by higher U.S. wages, and they were willing to take lower status jobs in the United States to gain this financial advantage. Interesting to note, since it differs with the results of most studies of Mexican migrants, very few of those sampled in the Poitras study had been agricultural workers; most, as one would expect from their occupational backgrounds, were urban dwellers who sought urban employment in the United States. The average salary of these migrants ranged from $3.18 per hour for Salvadorean women to $4.61 per hour for Costa Rican men. Those who entered with valid documents and then worked in contravention of their visas tended to earn more than did those who entered without inspection.[43]

However low the salaries were in the United States, according to the Poitras study and others, wages were many times that of previous wages in the home country (see table on "Labor Market Experiences of Undocumented/Illegal Aliens in the United States and Country of Origin"). The Poitras study revealed that Salvadoreans earned an average hourly wage of $0.95 at home and $3.77 in this country. Cornelius indicated that "the average landless agricultural worker interviewed in my study in northeastern Jalisco was earning about 35 pesos (U.S. $1.35) per day, or 840 pesos (U.S. $36.62) per month in 1976.* By comparison, the average illegal migrant from my research communities working in the U.S. in 1976 was earning (U.S.) $2.50 per hour, or $480.12 per month--an income differential of 13-to-1."[44]

Differentiation in wages as an incentive for migration has been examined by Michael Conroy, Mario Coria Salas and Felipe Vila Gonzalez in "Socioeconomic Incentives for Migrations from Mexico to the United States: Magnitude, Recent Changes and Policy Implications." According to this study, there has existed and continues to exist a significant gap in wage differentials between the United States and Mexico. The data also reveal, however, that conditions on the Mexican side of the border are not as bad now as they were thought to be. There is strong evidence that the real earnings available to low-skilled workers in Mexico rose significantly in the years between 1969 and 1978 while real earnings for comparable workers in the United States declined substantially during the same period. These changes in wage levels have reduced the incentive for permanent migration from Mexico to the United States; with the changes in wage levels, a Mexican worker can now earn significantly more in Mexico than before and cannot rely on receiving considerably higher wages if he or she chooses to migrate to this country.

The change in incentives to migrate can be illustrated by comparing typical wages in Mexico and the United States. If a Mexican low-skilled worker had migrated permanently to this country in 1968, he would have earned a monthly average of $742 in the southwestern regions of the United States considered by this study. By 1978, the mean monthly wage in comparable dollars had shrunk by more than 13 percent to $651. At the same time, expected wages for that same person in Mexico increased by nearly 25 percent from 1,625 pesos to 2,127 pesos. Based on these figures, the authors conclude that "there has been a rapid and significant decrease in the real-wage incentive for potential permanent migrants to the United States between 1969 and 1978."[45]

The incentives for temporary migration, however, are different than those for permanent migration because of the devaluation of the Mexican peso. These devaluations required by the international lending agencies as a condition for the 1975 package of external assistance have substantially increased the incentive to migrate temporarily from Mexico to the United States. It is thus economically wiser for Mexican workers to take money earned in this country and spend it in Mexico where it is worth more relative to what it can buy in this country.

The effects of the devalued peso upon Mexican migrants' incentive to migrate temporarily will depend upon the proportion of the migrants' earnings which are remitted and exchanged for pesos under the devalued exchange rate. Regardless of the actual percentage of wages remitted, however, it is clear that devaluation has substantially increased the incentive to migrate temporarily.

The statistical evidence about employment and wages reveals only a part of the picture of motivation. Although it provides information about trends and overall patterns, individual stories also help explain why certain individuals from certain regions of certain countries come to the United States. For the men of Ahuacatlan who leave each autumn to seek jobs in the United States, a time-honored pattern of temporary migration is in operation (see table on "Duration of Stay of Undocumented/Illegal Aliens"). As reported in the New York Times:

> The men of Ahuacatlan are old hands at [illegal] crossing--Don Berna has been coming to the United States to work for nearly three decades--and they know enough to walk through the desert in the cool of the evening.
>
> Like hundreds of villages across central Mexico, Ahucatlan these days is only half a place, a village without fathers or husbands. A thousand people--the women and children, the old and the idle--live there now and perhaps another thousand, all men, are in the United States. "I call my parish a widows's parish," [said] Padre Tomas Cano. . . . "The men don't want to work in the fields here. The harvest, it is very bad, and people are so poor that they need money quickly, in order to eat."[46]

In other villages of Mexico, Guadalupe for example, seasonal migration to the United States is a pervasive a way of life. Reichert and Massey, in their study suggest:

> Guadalupe is probably extreme even for . . . traditional migrant areas. As a result of various historical events, Guadalupenos were left with almost no cultivable land in the years following the Mexican revolution. As a result, an unusually large share of Guadalupe's families are now landless. At the same time, most of the land that is owned by townspeople is of very poor quality. For many families, therefore, migration to the United States is the only rational choice.[47]

In Guadalupe, some of the townswomen also embark on the risky trip of undocumented/illegal migrants and for much the same reasons as their male counterparts. When asked their reasons for migrating, the women of Guadalupe said that it was not because they did not want to be separated from their husbands, as had been suggested, but because they needed to find work.

Generally it is conditions in the source country that most affect the likelihood of either legal or illegal migration. Cornelius has said of Mexican migration:

> Historically, severe drought, floodings, or other climatic conditions which affect agriculture have resulted in sharp increases in the rate of migration to the U.S. Another major problem in recent years has been the high cost or unavailability of chemical fertilizers in Mexico, needed even by subsistence farmers to grow crops in their depleted soils. The general point to be made is that the flow of illegal migrants from Mexico seems to respond far more to economic conditions within Mexico than to conditions in the U.S., including the U.S. level of unemployment and the level of apprehension effort by the INS. The massive upsurge in illegal migration to the U.S. in recent years has coincided with Mexico's most serious economic crisis since the late 1930s.[48]

The so-called "push" factors also account for migration from other countries. In a paper prepared for a Select Commission consultation on Caribbean migration, D. Elliott Parris summarized these push factors as overpopulation, unemployment, government encouragement of migration, underappreciation of skills and political victimization. It must be remembered, though, that for undocumented/illegal migrants from the Caribbean Basin who have been interviewed in research studies, poverty has often been less accountable as a motive in migration than the desire for higher wages and better economic opportunities.[49]

While the push factors--unemployment, low wages, a tradition of migration--remain the most forceful reasons for illegal entry, the lure of the United States is still a strong pull factor. In a study of recent New York immigrants, an Irish woman described her motivation for coming:

> I think I decided to come to America more because of my dad than anyone else. He always talked about wanting to go to America. He never did. But I got a tourist visa and came over. That was two years ago.[50]

A Spanish man who had overstayed his visa described his reasons:

> I was sure about America because I could see what America could do. In electronics, for example. My field. I was trained in France to be an electronics engineer. I could see what tremendous progress America has made. Or in photography--because I'm an amateur photographer. You can see the pull America had for me. . . . Freedom was most important in why I came here.[51]

Though no longer seen as having streets paved with gold, the United States is nevertheless still regarded as a land of opportunity and of freedom. For many immigrants, even those not pushed from their homes by poverty, coming to this country is worth the price of illegal status.

The U.S. Experience with Undocumented/Illegal Migrant Earnings

Most of the studies that have examined the earnings of undocumented/illegal aliens indicate that they generally earn at or above the minimum wage (see table on "Labor Market Experiences of Undocumented/Illegal Aliens in the United States and Country of Origin"). Wages are by no means uniform among undocumented/illegal aliens. Agricultural and domestic workers tend to earn lower wages, however, as do Mexicans and those working in border areas. According to the North-Houston study, for example, Mexican undocumented/illegal aliens earned less per hour ($2.34) than those from elsewhere in the Western Hemisphere ($3.05) and those from the Eastern Hemisphere ($4.08). The overall sample earned $2.71 per hour. Those employed in farmwork earned an average of $2.11 per hour, while those employed in nonfarmwork earned an average of $2.83 per hour. As far as geographic distribution is concerned, those employed in the southwestern United States earned an average of $1.98 per hour, those in California earned $2.60 per hour, in the Midwest and Northeast $3.15 per hour and on the East Coast $3.29 per hour.

North and Houston explain that "the variable most clearly associated with wage levels across these groupings was education, which ranged from a low 3.5 years of schooling for undocumented/illegal aliens in farmwork to a high of 8.9 years for those employed on the East Coast, and from 4.9 years of education for Mexicans to 11.9 for Eastern Hemisphere respondents.[52]

Wages are also affected by the sex of the respondents and their method of entry. In general, men earn more than women and visa abusers earn more than those who entered without inspection. Sheldon L. Maram's study of the garment industry and farmworkers in Los Angeles revealed similar overall earnings. His sample, mostly of Mexicans, earned $2.77 per hour as garment workers and $2.95 per hour as restaurant workers. He found a wage differential, though, in looking at the hourly earnings of men (garment-$2.93; restaurant-$3.01) and women (garment-$2.71 per hour; restaurant-$2.71), and indicated that it was more likely that women would be paid below the minimum wage. Poitras's study of return migrants indicated higher hourly wages for his sample of Costa Ricans ($4.48) and Salvadoreans ($3.71). Here again, there was a differentiation based on gender; male Salvadoreans earned an average of $4.17 per hour while females earned $3.18. The differentiation by entry status was also marked. Those who came in with documents but worked illegally earned, on average, $4.35 per hour while those who entered without inspection earned, on average, $3.23.

Maram's study indicates that an examination of wages reveals only one facet of the earnings picture. He found that violations of overtime pay requirements were more likely than those of minimum wage, stated, "among those who worked overtime [in the restaurant trade] actual or apparent violations were found among 81 percent of the undocumented and 50 percent of the citizens/residents.[53] He also found almost the same precise proportion of violations in the garment industry. Aside from the violations, the undocumented/illegal aliens reported a lower level of fringe benefits. They reported that their current employers were generally not making sick leave or health insurance payments. Only 9 perent of those employed in restaurants and 6 percent of those in the garment industry reported paid sick leave and 11 percent of the restaurant workers and 4.5 percent of the garment industry workers reported paid health insurance. Although the proportion of citizens and permanent resident aliens receiving these payments was also low, it was significantly higher than that of undocumented/illegal aliens. Thus, even many of these undocumented/illegal aliens earning at or above the minimum wage are being exploited.

Length of Stay in United States

The length of stay of undocumented/illegal aliens gives information about two issues: the temporary/permanent nature of the migration intention and the duration of contact with the United States (see table on "Duration of Stay of Undocumented/ Illegal Aliens"). Research studies reflect a wide range in the duration of stay of undocumented/illegal aliens--from several months to many years--depending on location of the study site and characteristics of the sample. Studies of aliens apprehended in border areas show far shorter lengths of stay than do studies of resident undocumented/illegal aliens in interior areas. Of undocumented, Mexican male migrants apprehended within 25 miles of the southern border in 1979, only seven percent had been in this country for more than six months. On the other hand, the Van Arsdol study of unapprehended undocumented/illegal aliens interviewed at an immigration counseling center revealed that over 50 percent had been in the United States(for more than three years. In a study conducted in residences and places of business in Orange County, California, researchers found that 19 percent of the sample had been living in this country for more than 10 years. The Poitras study of Costa Rican and Salvadoran return migrants, that obviously used a sample of temporary migrants, revealed stays that averaged 17 to 25 months.[54]

Impact of Undocumented/Illegal Migration

"The unregulated influx of people into this country is beginning to cause a serious economic problem. This country is no longer able to turn its head and ignore the problem. We are no longer able to defend the influx of illegal aliens on the theory that these laborers are needed to fill jobs refused by U.S. citizens. Our first responsibility in this country is to take care of our own citizens."
--Letter from James Bouligny, El Campo, Texas

"The flouting of our immigration laws by the illegal aliens just brings contempt for the law. Worse yet, it tends to breed contempt for all laws."
--Letter from Philip Hennessey, Everett Washington

"As an employer of agricultural workers we can categorically state there are few-to-no domestic seasonal agricultural workers available to us."
--Letter from Susan Naumes, Medford, Oregon

"I see them in the grocery store with their food stamps dressed as well as me, and a lot younger, and I'm a 62-year-old widow living on a measly $501 a month, doing some sitting with a 95-year-old woman to make ends meet."
--Letter from Rubye Harvard, Santa Ana, California

> "I am not here to take jobs from American workers. Where I work picking grapefruit there are no American workers. American citizens do not pick where I work because the work is very hard. I have never received food stamps, social security benefits, or any U.S. government assistance, although I do pay taxes to the U.S. government."
>
> --Letter from Ciro Castillo, Queretaro, Mexico

> "I knew of many instances where my two younger brothers and other Blacks would apply for jobs at the local factories, only to be turned away. The pattern soon became very obvious to them. The majority of the workers in unskilled labor positions were Mexicans. . . . The Mexican workers were cheaper and easier to have around. Many of the employers saw Blacks as asking for too many things such as equal wages, benefits, improved safety conditions and unions."
>
> --Letter from Joyce Reitter, Oakland, California[55]

The debate about the impact of undocumented/illegal migration is a fierce one. Further, there are no easy answers. As the excerpts from the preceding letters and testimony show, arguments focus on economic issues--displacement of workers and depression of wages and working conditions--on the use of services and on the social and legal implications of undocumented/illegal entry. Because there are so few reliable facts about the experiences and impacts of undocumented/illegal migrants, discussion has often relied on theoretical perspectives and/or emotional biases. A review of the literature, however valuable as a presentation of the various points of view, can point to few conclusive findings.

Impact on the Labor Market

The impact of undocumented/illegal migration on the labor market is generally believed to be its major consequence. Of primary concern in evaluating this impact are the issues of displacement of U.S. workers and the depression of wages and working standards.

North and Houstoun, in their work on the characteristics and impact of undocumented/illegal migration, summarized what they believed were the adverse impacts of such migration:

- it will depress the educational and skill level of the labor force;
- it will depress labor standards in the secondary sector, which in some cases will create an underground market of illegal wages, hours, and workers;
- it will cause a displacement of low-skill legal resident workers;
- it will create a new class of disadvantaged workers, one which inextricably conjoins national origins and illegal status in the U.S.; and
- it will inhibit efforts to improve job satisfaction in the secondary sector.[56]

Their basic assumption is that undocumented/illegal aliens take jobs that might otherwise go to legal U.S. residents and/or make otherwise acceptable jobs unacceptable to U.S.

workers. This assumption further leads to the conclusion that these adverse effects outweigh any possible benefit--increased productivity, for example--that might accrue from the presence of undocumented/illegal aliens in the work force.[57]

This perspective is shared by others. Donald Elisburg, then Assistant Secretary of Labor for Employment Standards, testified at the Select Commission's New York hearing that "in taking jobs in the United States, [undocumented/illegal aliens] depress working conditions and adversely affect employment opportunities, particularly among the most vulnerable people in our economy--minority teenagers and women who head households, among others."[58] Vernon Briggs argues similarly that undocumented/illegal aliens, especially in border areas, displace Mexican Americans from jobs and depress sectors of the economy.[59]

Michael Wachter examined the "distribution of benefits and costs of illegal aliens" in a recent essay, "The Labor Market and Illegal Immigration: The Outlook for the 1980s." Wachter's approach is to treat the flow of undocumented/illegal aliens as an increase in the supply of unskilled labor. While he admits that this view omits consideration of some of the outcomes of illegal status, he argues that the demographic characteristics of the aliens are more important than their legal status. Wachter concludes:

> Given this framework, the impact of illegal aliens, at least in today's labor market, seems indisputable. Although the magnitude of the effect would vary depending upon the actual number of illegal aliens in this country who are working, the direction of the impact is known. First, illegal aliens depress the wages of the lower skilled native American work force. Second, given existing levels of minimum wages and welfare, for which the Americans but not the aliens are eligible, the wage reduction resulting from illegal immigration may also cause higher unemployment rates for lower skilled native workers.[60]

Wachter's conclusions stem from a theoretical perspective that defines workers as either complements of or substitutes for each other. Those who are substitutes are in greater competition with each other than those who are complements. Under this theory, the smaller the divergence is between workers' skill levels, the greater the competition for jobs. In an advanced economy with relatively few unskilled jobs, increasing the number of workers without industrial skills increases the competition for what is in any case a scarcity.[61]

Such competition is also believed to have an adverse effect on wages in areas with high concentrations of undocumented/illegal aliens. Barton A. Smith and Robert J. Newman, in one of the few empirical studies on this issue, found that in metropolitan areas near the Texas-Mexico border, annual real income is $684 lower than in metropolitan areas further from the border. The wage differential in this study was found to be slightly higher for Mexican Americans and for unskilled workers. The authors of the study believe that these wage differentials may be caused in part by undocumented/illegal migration, but conclude that "if migration from Mexico is having a negative impact on wages along the border it is not as severe as many have contended." They argue that the less-than-expected real differential in wages may be explained by two factors. First, they suggest, Mexican aliens may be taking jobs unwanted by U.S. laborers, and, second, both Anglo American and Mexican American laborers, may be so highly mobile that large-scale internal migration may prevent wage disparities from becoming too large.[62]

Other researchers also believe that undocumented/illegal aliens may not represent a source of competition that displaces U.S. workers and depresses wages. Gilbert Cardenas argues, for example, that undocumented/illegal aliens usually represent an additional, not substitute, supply of labor.[63] And, in a hearing held by the Select Commission, Edwin Reubens--discussing, as does Wachter, skill level rather than legal status--suggested that "when we break it down by occupations and types of activities, we find that the degree of real competition of these aliens with Americans seeking jobs to be of a much smaller magnitude.[64]

These scholars base much of their argument on the unavailability of U.S. workers for many of the jobs held by undocumented/illegal aliens. Wayne Cornelius wrote in a study of undocumented/illegal Mexican migration:

> Workers cannot be displaced if they are not there, and there is no evidence that disadvantaged native Americans have ever held, at least in recent decades, a significant proportion of the kinds of jobs for which illegals are usually hired, especially in the agricultural sector.[65]

Cornelius acknowledges that undocumented/illegal workers are also taking industrial jobs in urban centers, but suggests that for Mexicans, at least, the trend toward such employment is gradual. Further, even in the industrial sector, he argues, undocumented/illegal aliens take jobs

U.S. workers will not accept. To substantiate this assertion, he points to the failures of two programs--in Los Angeles and San Diego--that were explicitly designed to attract U.S. workers to jobs vacated by apprehended aliens. In both cases, U.S. workers refused the jobs; in San Diego they were eventually filled by legal commuter workers from Mexico.[66]

Michael Piore provides an explanation of the unavailability of U.S. workers for these jobs, and argues:

> Industrial societies seem systematically to generate a variety of jobs that full-time, native-born workers either reject out of hand or accept only when times are especially hard. Farm labor, low-level service positions like dishwasher or hospital orderly, and heavy, dirty unskilled industrial work all fit into this category. Jobs like these--referred to by manpower analysts as jobs in the "secondary labor market"--offer little security, opportunity for advancement, or prestige. Often they are seen as degrading. Finding people to fill them poses a continual problem for any industrial system.[67]

What is undesirable to a U.S. citizen, though, may be highly valued by an undocumented/illegal alien. As Piore suggests, such workers may see their employment as temporary, and they may therefore be more willing or able to tolerate difficult conditions. In addition, the wage differentials between U.S. jobs and those of the home country may make even secondary labor market jobs desirable. Piore summarizes his arguments by calling the belief that undocumented/illegal aliens replace U.S. workers a misconception. He says that the jobs held by these aliens fall into two categories, both of which complement or aid U.S. workers. Some of the secondary labor market jobs that undocumented/illegal aliens take are in industries that would close or relocate outside the United States if there were no alien work force. Since these industries also often have jobs desired by U.S. workers, undocumented/illegal aliens actually provide opportunities rather than displace citizens. In the other group are jobs which contribute to the standard of living of many U.S. citizens, for example, domestic and restaurant work.

Wachter suggests that the argument that is based on unavailability of U.S. workers is more complicated than it appears, and that it does not rebut his argument about the displacement effects of undocumented/illegal migration. Even though the direct displacement effects may be reduced in the situations described by Piore and others, the indirect effects may still adversely effect U.S. workers. Wachter constructs an hypothetical situation in which undocumented/ illegal aliens are forced to return to their home countries immediately.

Under such a circumstance, he says, pressure to improve wages at the bottom of the job ladder would be increased substantially. Although some jobs would be lost because employers could not afford the higher wages, other jobs would see an increase. With undocumented/illegal workers out of the job market and an increase in wages, many domestic workers would be interested in formerly undesirable jobs. Wachter estimates that of a possible 6 million jobs filled by undocumented/illegal aliens, 2.5 million would be available to U.S. workers at higher wages.[68]

Wachter's position is speculative and rests on his assumption, that "there is a built-in mechanism that prevents serious disruption: For any job that is 'vital,' real wages will be bid up in the absence of illegal aliens to ensure the availability of domestic workers."[69] What he does not take into account is Piore's point that certain industries might as easily go abroad in search of labor as raise their wages, although he does say that skilled workers in firms that hire undocumented/illegal aliens could suffer a decline in income.

Although there is great disagreement regarding job displacement and the overall wage effects created by undocumented/ illegal migration, there is less dissension over its impact on the wages and working conditions of the secondary labor market. Certainly not all undocumented/illegal aliens experience abuse, but most experts agree that serious problems do exist in some quarters. An undocumented/illegal alien who testified at a Select Commission hearing described his experience:

> They say that because we do not have U.S. papers we are not entitled to protection by the U.S. Constitution. Because of this we are often paid low wages and are forced to live and work in subhuman conditions. In Florida we work carrying 100 pound bags up ladders that are sometimes 20 feet high. If we fall from a ladder or are otherwise injured on the job we rarely receive workmen's compensation. Many undocumented workers in Florida live in small house trailers that accommodate more than 20 workers, and often pay high rent for such living space.[70]

Difficult conditions, however, are also found in many urban settings. A labor leader at another Commission hearing described conditions in the New York garment industry:

> During the last year our organizers have located over 500 small, nonunion garment shops in the Bronx, the second smallest borough of New York City. Additionally, they found over 200 small shops in Manhattan, and they estimate that there are several hundred more in Brooklyn and Queens. Conditions in these shops vary somewhat, but in virtually all of them workers are paid poorly, and the work environment is far from humane. Minimum hourly wages are nonexistent. . . . Homework, the scourge of our industry 70 to 80 years ago, has returned with a vengeance. . . . Basic health and safety standards are completely neglected in the new sweatshops.[71]

The differential in wages between the home countries of most undocumented/illegal aliens and the United States may make these aliens less concerned than their citizen counterparts about the actual level of their U.S. wages. The potential threat of apprehension and deportation may also make undocumented/illegal workers more willing to work for lower wages. At the Select Commission hearing in Los Angeles, a representative of the International Ladies Garment Workers Union (ILGWU) told of instances where employers, whom he cited specifically, used the Immigration Service to intimidate workers:

> Daisy of California: A supervisor spreads a rumor of a possible INS raid. Out of a work force of 130, only six remain working. Several days later, company announces a pay reduction and erosion of benefits.
>
> High Tide: A strike occurs. INS arrives and 17 pickets are apprehended, detained and, by evening, deported.
>
> California Sample: One hour before another federal agency, the National Labor Relations Board, is to conduct an election, INS van parks near dock within full view of employees as company spokesman speaks of impending INS raid.
>
> Hollander Manufacturing: Three days after an election in which the company lost, INS raids the plant picking up all union supporters. Retaliation or coincidence? When questioned, INS produces a letter on company stationery requesting the raid.[72]

Although it should again be noted that not all employers of undocumented/illegal aliens are guilty of such practices, abuses of working conditions and wages do exist. Further, undocumented/illegal aliens, to some extent, are valued by employers because of their vulnerability.

The Economic Impact of Remittances

There are no reliable data on the overall amount of money sent abroad by undocumented/illegal aliens (see table on "Payment of Remittances by Undocumented/Illegal Aliens"). It is assumed that the majority of those aliens who come to the United States for temporary employment send or take back some part of their U.S. income, either in cash or goods. The actual level of remittances is affected by several factors, although length of stay and country of origin seem to be more important indicators than wages earned.

In Cornelius's study, 81 percent of his sample reported that they had sent money home regularly during their stay in the United States; 64 percent had returned with an average of $458 after their most recent trip. These migrants from Jalisco returned about 40 percent of their earnings to Mexico.

Poitras estimates that the return migrants in his sample of Salvadoreans and Costa Ricans sent one-fourth of all income from their U.S. jobs to their families. His sample of 573 persons were estimated to have sent home--at a low estimate--$1.4 million in cash and goods during a ten-year period.

North and Houstoun found that a monthly average of $105 per worker was sent home to help support an average of 4.6 persons. Mexican respondents, who reported the lowest earnings of those from any region of origin, also reported the highest monthly remittances. Assuming that about one million Mexican undocumented/illegal migrants are working in the United States, they estimated, in 1976, that $1.5 billion could be sent annually to Mexico by these aliens. Maram in his study of the garment industry in Los Angeles found that 54 percent of his undocumented/illegal alien sample sent money home a minimum of once every three months and that 40 percent sent money home at least once a month. Among U.S. citizens and permanent resident aliens, just 18.5 percent sent money at least once a month. Maram also found that, the undocumented/illegal garment workers who remitted funds at least once every three months averaged $96 per month. The average for citizens and permanent resident aliens was lower.[73]

The economic consequences of undocumented/illegal alien remittances are unclear. On the one hand, large-scale removal of U.S. dollars in the form of remittances constitutes a drain on the economy and adversely affects U.S. balance of payments. As many as several billion dollars per year may be leaving the country in this form. What remains unknown after all the studies, though, is the contribution of these workers to U.S. productivity and what percentage of the remittances is used to buy U.S. products. Some--possibly a large amount--of the remittances may be returned to the United States in the form of purchases. While such purchases would not offset the money being sent out of the United States, they would lessen the impact on the U.S. balance of payments.

Even if the domestic consequences were known, questions would still arise about the international impact of remittances. Although few would argue that undocumented/illegal migration is a preferred form of foreign aid, it is likely that remittances are helping foreign economies and, therefore, contributing to international economic stability. Cornelius, writing about Mexican migration, states, "it [the sending of remittances] is a crucial (if generally unacknowledged) factor in the Mexican balance of payments, considerably more important than tourism. . . . At the level of the local community in Mexico, the impact of migrants' earnings is difficult to underestimate. Income from U.S. employment is crucial to the maintenance of the migrants' families; virtually all of the money remitted to relatives while the migrant is away is used for family maintenance."[74] A halt in the payments made by undocumented/ illegal aliens could have negative repercussions in sending countries, the nature of which are unknown. Without a substitute form of help or time to accommodate changes in remittances, it is possible that some nations could experience economic and political dislocations that will, in turn, affect the United States.

Impact on Social Services

Measuring the overall impact of undocumented/illegal aliens on U.S. social services--cash assistance, medical assistance and educational services in particular--is as difficult as measuring their impact on the labor market and overall economy. Again, few reliable facts are known, although theoretical and emotional responses abound. In order to gauge the effect of these undocumented aliens, several factors must be taken into account: their contributions through taxes to social services, their own utilization of programs, and the effects that labor market displacement and wage depression may have on the use of services by U.S. citizens and permanent resident aliens.

The arguement often heard about undocumented/illegal migrants is that they use social services, for which they do not pay and are therefore a burden on U.S. taxpayers. The Select Commission heard testimony from many state and local officials about the financial burdens imposed on them by undocumented/illegal aliens. Of particular concern was the burden placed on medical services. According to Richard A. Berman, Director of the New York State Office of Health Systems Management, "a review of the $100 million total deficit shared by New York State hospitals, exclusive of the Health and Hospitals Corporation facilities, suggests that a substantial portion of that deficit is the result of providing free care to undocumented, medically indigent aliens." [75] Peter F. Schabarum, Supervisor, First District, County of Los Angeles, testified similarly as to the financial burden on localities: "We conservatively estimate that local property taxpayers will spend $75 million this year to cover the cost of nonreimbursed health care provided to illegal aliens by our Department of Health Services, and that cost is escalating dramatically."[76]

The hearing testimony makes it apparent that, although many are concerned about costs, few hospital administrators or local officials question the responsibility of local hospitals to provide emergency treatment to all patients, regardless of legal status. According to a study made by the Department of Health, Education and Welfare in 1979, the type of services that undocumented/illegal aliens receive from hospitals varies by city. Emergency room treatment is rarely denied, and maternity services are generally given when the patient can demonstrate an ability to pay at least a portion of the expenses. Traumatic injuries appear to be routinely treated, although the Select Commission did hear evidence to the contrary. In Texas, for example, a representative of the Camino Real Health Systems Agency reported during a Commission site visit that undocumented/illegal aliens reporting injuries and emergency medical conditions were turned down by hospitals in the area.[77]

The issue here is the question of payment--who has the financial responsibility for the payment of medical care given to undocumented/illegal aliens. The localities often claim that these aliens are a federal responsibility. The federal government has the duty to enforce immigration laws, according to this argument, and therefore the federal government should bear whatever burden comes from ineffective enforcement. The Los Angeles County Board of Supervisors has submitted several claims to the federal government through the Immigration Service and the Department of Health and Human Services (formerly HEW) requesting reimbursement for services provided to undocumented/illegal aliens.[78] Legislation has also been introduced repeatedly to place responsibility for undocumented aliens clearly with the federal government.

Critics of this point of view question the accuracy of the data used and the interpretations made by those claiming financial burden. The estimates used in some studies, for example, have been criticized because of the methods used to identify undocumented/illegal aliens. Untrained in immigration matters, hospital personnel often are unable to make an accurate judgment about legal status. In some cases, members of ethnic minorities who are unable to pay their bills and who are not covered by some type of third-party reimbursement plan are automatically judged to be undocumented/illegal aliens.[79] Further, hospitals and local government officials, according to Fred Arnold, formerly Research Director of the Select Committee on Population, U.S. House of Representatives, have a vested interest in supporting the highest possible estimate of costs, particularly if they are arguing for reimbursement.[80]

A number of studies that have examined the use of medical services from the perspective of the undocumented/illegal alien also raise questions regarding the accuracy of the local estimates of financial burden. Most of these studies do show that a significant proportion of undocumented/illegal aliens in the samples examined use hospitals or clinics (see table on "Impact on Services of Undocumented/Illegal Aliens). The North-Houstoun study shows that 27.4 percent used such services; the Orange County Taskforce study shows 28 percent usage; and the Keely, et al. study of Haitian and Dominicans points to 44.5 percent and 76.5 percent, respectively. These statistics present only a part of the picture. A much lower proportion of the samples' undocumented/illegal aliens used free medical care: 4.6 percent in the North-Houstoun study, less than 9 percent in the Orange County Task Force project, 8 percent in the Jorge Bustamante study, and 15.4 percent in Cornelius's. The cost of medical care is often paid by the undocumented/illegal migrants themselves or by insurance plans in which they participate. A third or more of those questioned by North and Houstoun, Keely, and Orange County stated that hospitalization insurance had been deducted from their pay. In the North-Houstoun study, 83 percent of those who said they had used medical services had insurance coverage.[81]

Evidence about other services points to even less use (see table on "Impact on Services"). The North-Houstoun study of apprehended aliens shows that 0.5 percent received welfare funds, 1.3 percent food stamps, 3.9 percent unemployment compensation and 3.7 percent used public schools. The Keely study of Haitians and Dominicans revealed that none of the former and 5.9 percent of the latter received welfare funds. One exception to this pattern was found in a study of undocumented/illegal aliens who visited a counseling center in Los Angeles. At the time of the interviews, 8.1 percent of the respondents reported that they currently received welfare support. Women were the most frequent users of public assistance programs with 15.6 percent receiving some kind of financial assistance. Since that time, however, Los Angeles has instituted a new program that has significantly reduced the number of undocumented/ illegal migrants applying for Aid to Families with Dependent Children.

The generally low use of social services by undocumented/illegal aliens can be explained by several factors. First, undocumented/illegal migrants are ineligible to receive most forms of financial assistance, and many communities require documentation of citizenship or legal permanent residence before payments are made. Second, the majority of these migrants come to this country to work, and if they cannot find employment, they return to their home countries. Third, many are temporary visitors--whatever the reason for their entry into the United States. They often do not bring their families with them and, therefore, do not need many of the services (for example, public schools) that permanent residents use. Fourth, many undocumented/illegal aliens fear detection if they apply for these programs.

Even if undocumented/illegal aliens were to make use of social services, it is by no means established that they are an economic burden to U.S. citizens. To determine the net cost of service usage by undocumented/illegal aliens, it would be necessary to determine:

- Their contributions to the public coffers through tax payments;
- Their contributions to overall economic growth; and
- The extent to which prices are restrained because of available undocumented labor.

There is no research on the last two factors, but recent research studies (see table on "Impact of Services") show a wide range in the proportion of undocumented/illegal aliens who pay federal and/or state taxes. It appears from samples taken of temporary agricultural workers in border areas that these aliens are less likely than those in other samples to have taxes withheld. Avante Systems' report, "A Survey of the Undocumented Population in Two Texas Border Areas, 1978," shows that in El Paso and McAllen/Edinburgh, only 17 percent of a sample of less than 600 paid taxes.[82] On the other hand, North-Houstoun found that 73.2 percent of their sample of apprehended aliens had paid income taxes. In Bustamante's study, 61.8 percent paid taxes, and in Cornelius's sample, 64 percent paid. The evidence overall points to a significant level of tax payment among undocumented/illegal aliens. This evidence is persuasive enough to prompt some researchers to conclude, as does Fred Arnold, that there are some indications "that these tax payments may more than offset the cost of providing health care and other social services to undocumented aliens."[83]

Before any definitive conclusions can be reached, however, one more factor should be taken into account in measuring the impact of undocumented/illegal migration on social services--the effect of U.S. worker displacement on the use of services by legal residents. If U.S. workers are being displaced by undocumented/illegal aliens and are therefore unemployed, they may be making increased use of cash and medical assistance programs as well as unemployment insurance benefits. Estimates by the Congressional Budget Office indicate that "a one point increase in the unemployment rate automatically increases transfer payment outlays by about $7 billion. With a total labor force of about 100,000,000 a single point increase in the unemployment rate equals about 1,000,000 persons, and the cost of a single unemployed worker would thus be $7,000 (7 billion divided by 1 million)."[84] Such allegations rest on unproven assumptions, though. Until the debate on the displacement effects of undocumented/illegal migration is resolved, it is impossible to measure the effect of this phenomenon.

Despite the lack of consensus about the degree to which undocumented/illegal aliens impose on U.S. taxpayers, there is agreement that failure to use some services--particularly health ones--could have serious ramifications for U.S. society. Undocumented/illegal aliens are generally fearful of approaching those in authority and, therefore, often avoid using hospital services, even when such services are greatly needed. Moreover, those who do seek care often fail to return for follow-up treatment or give false information because of their fear of detection. As Suzanne Dandoy, Director of the Arizona Department of Health Services stated at the Phoenix hearing of the Commission:

> Continuity of care is limited by incorrect information supplied by Mexican nationals who fear for their own legal status or that of others close to them. The potential danger from this practice of giving incorrect addresses and information is awesome in the area of communicable diseases or life-threatening conditions.[85]

Richard Berman, Director of the New York State Office of Health Systems Management also commented upon the public health hazards of undocumented/illegal migration. He testified that these migrants have been found to be carriers of hepatitis, tuberculosis, salmonellosis, shigellosis, amebiases and parasitic diseases. He also suggested that "as a further complication, many aliens are employed as food processors, dishwashers, hospital aides, and in other occupations involved in the delivery or handling of food," and concluded that "without question, lack of access to appropriate care for these persons creates a clear public health problem which requires both state and federal attention."[86]

The public health hazard is not the only serious ramification of an underground population. Psychological problems are reported to be particularly troublesome. Marta Timbres, a psychiatric social worker, testified that "[the undocumented/illegal] population tends to be withdrawn and the children learn to isolate themselves and be guarded in their peer relationships. . . . The fear of being discovered contributes to the underutilization of social agencies and mental health centers that would alleviate some of the stresses." she gave two case studies in which the undocumented status of one member of a family caused problems for others:

> In one incident, a young Mexican American mother revealed that her periods of depression coincided with psychotic episodes on the part of her aged, undocumented mother who lived with her. Although it was apparent that the stress of living with her mother's untreated psychosis was a factor in the primary client's depression, treating the mother's illness was difficult for the mental health center which did not wish to jeopardize its funding, and for the young woman, who feared that involvement with any agency might result in her mother's deportation.
>
> Another example is that of a boy referred to the health center by a school social worker for learning problems that were thought to be emotionally based. When the child's

> mother accompanied him to the clinic, she disclosed that, although the child was American born, she herself was undocumented and this lack of documentation was, in fact, causing much anxiety about possible deportation within the family at that time. The social worker in this case faced the conflict of interest of wanting to treat the family situation effectively by working with all members involved and yet wanting to protect the agency from violating policy.[87]

Thus, the fear of detection that keeps undocumented/illegal aliens from seeking treatment can have far reaching consequences. In the cases of psychological and public health problems, it is the illegal status of the aliens that causes harm to themselves, to their families and ultimately to U.S. society.

Conclusion

Indeed, it is the underclass character of the undocumented/illegal population that leads to serious negative impacts on U.S. society, not merely the fact that they hold jobs, an unknown proportion of which might otherwise be taken by U.S. citizens and/or lawful permanent resident aliens.

If one were to examine only the economic impacts of undocumented/illegal aliens, including some job displacement and the negative effects on U.S. working standards, one might conclude that undocumented workers were a net asset. They pay more into federal coffers than they take out; work at many jobs that would otherwise go unfilled; contribute good labor at low cost, thereby helping to keep the prices of consumer goods down and send remittances back to their home countries which, in turn, may be used to buy U.S. goods.

But this nation's interests are not merely economic. The health problems mentioned above derive in large measure from the fugitive status of undocumented/illegal aliens. Similarly, the Select Commission on Immigration and Refugee Policy heard testimony that undocumented/illegal aliens are easy prey for criminals since aliens without legal standing are afraid to report crimes to the police.

Testimony also focused on undocumented/illegal aliens who were afraid to send their native-born children to public school. Because fear stalks undocumented/illegal aliens, this population cannot participate in the mainstream of U.S. society, contribute fully to that society, or benefit from the protection its laws provides. These factors are not just economic. They speak to the question of the nature and purpose of society as shaped by the First, Fifth and Fourteenth amendments to our Constitution, which provide basic freedoms, due process of law and equality under the law for all persons who live in this country.

Thus, policy determinations with respect to undocumented/illegal migration cannot be made on the basis of its impact on the U.S. labor market (or the U.S. economy) alone, even if it were possible to quantify that impact with precision.

One can see undocumented/illegal migration presenting no serious economic problem negatively and still view it as a serious social problem which requires attention before it becomes worse. And it is likely that the situation will get worse as a result of considerable population growth, unemployment and underemployment in the Caribbean Basin unless new measures are taken to curtail it.

The long-term social consequences of a growing undocumented/illegal alien population seem clear:

- Expansion of an underground population with negative consequences for public health, education and the U.S. criminal justice system;

- Promotion of the idea that certain kinds of labor are fit only for foreigners and a growing U.S. dependence on foreign labor for the performance of those jobs;
- Institutionalization of a double standard of legal due process and equal protection for a growing alien population, with concomitant litigation growing out of that ambiguity; and
- Growing disrespect for the law generally and a specific lack of regard for an immigration law which penalizes those who obey it and wait their turn to enter the United States legally.

Even the negative economic effects have strong social implications:

- Growing exploitation of the workplace would further depress U.S. labor standards to the detriment of the health and well-being of U.S. workers and their families; and
- Displacement of U.S. workers, and especially the perception of displacement, would become stronger among those most directly affected--the young, relatively unskilled, Black populations--exacerbating ethnic tensions in a socially pernicious way.

For all of these reasons--not because undocumented/illegal aliens harm U.S. economic growth and productivity--new and effective measures should be instituted to curtail the settlement of such persons. It is important to recognize that there will be a cost associated with the institution of such measures. The severance of a reasonably reliable flow of inexpensive labor to the United States will cause dislocations for the employers who have become dependent on undocumented/illegal aliens and for the families and villages which have come to rely on the income from remittances sent by immigrants in the United States.

SERIES OF TABLES ON CHARACTERISTICS AND IMPACTS OF UNDOCUMENTED/ILLEGAL ALIENS

LEGEND (Data from following studies used to compile charts)*

B	Jorge Bustamante, "Undocumented Migration from Mexico: Research Report," *International Migration Review*, 1977.
C	Wayne Cornelius, "Mexican and Caribbean Migration to the U.S.: The State of Current Knowledge and Priorities for Future Research," 1978.
CEN	Carlos Zazueta (CENIET), *Mexican Workers in the United States: Some Initial Results and Methodological Considerations of the National Household Survey of Emigration*, 1980.
D	Christine Davidson, Immigration and Naturalization Service, "Characteristics of Deportable Aliens Located in the Interior of the United States," 1979.
INS	Immigration and Naturalization Service, Office of Planning and Evaluation, "Illegal Alien Study. Part 1. Fraudulent Entrants Study: A Study of Malafide Applicants at Selected Southwest Land Border Ports," 1976.
K	Charles Keely, Patricia Elwell, Austin Fragomen, Silvio Tomasi, "Profiles of Undocumented Aliens in New York City: Haitians and Dominicans," 1977.
M	Sheldon Maram, "Hispanic Workers in the Garment and Restaurant Industries in Los Angeles County," 1980.
NH	David North and Marion Houstoun, "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market," 1976
P	Guy Poitras, "The U.S. Experience of Return Migrants from Costa Rica and El Salvador," 1980.
RM	Josh Reichert and Douglas Massey, "Patterns of Migration from a Rural Mexican Town to the U.S.: A Comparison of Legal and Illegal Migrants," 1979.
V	Maurice Van Arsdol, Joan Moore, David Heer and Susan Haynie, "Non-Apprehended and Apprehended Undocumented Residents in the Los Angeles Labor Market: An Exploratory Study," 1979.

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* Specific sources are listed at the bottom of each table.

Charts compiled by Sheila H. Murphy and Philip M. Wharton

SOURCES

B Jorge Bustamante, "Undocumented Migration from Mexico: Research Report," International Migration Review 11 (2) (Winter 1977): 149-177.

a) Interviewed undocumented/illegal Mexican workers recently deported from the U.S. in Matamoros, Tamaulipas, November 1975.
b) Interviewed apprehended undocumented/illegal Mexican migrants upon migrants' return to 8 Mexican border towns, November 1975.

D Christine Davidson, U.S. Department of Justice, Immigration and Naturalization Service, Statistical Analysis Branch. "Characteristics of Deportable Aliens Located in the Interior of the United States." Paper presented at annual meeting of Population Association of America, Washington, D.C., March 1981.

Sample of I-213 forms from calendar 1978 completed by aliens apprehended in the interior four or more days after entry. 4,490 forms examined include Silva cases. Interior apprehensions include the 34 district offices and 7 border patrol sectors: Buffalo, Detroit, Havre (Montana), Livermore (California), Miami, New Orleans and Spokane. Characteristics delineated in study limited to variables with low nonresponse/illegibility rates, primarily demographic data.

INS U.S. Department of Justice, Immigration and Naturalization Service, Office of Planning and Evaluation, "Illegal Aliens Study. Part 1. Fraudulent Entrants Study: A Study of Malafide Applicants at Selected Airports and Southwest Land Border Ports," (Washington, D.C.: U.S. Department of Justice, Immigration and Naturalization Service, September 1976).

Random inspections by two special teams from September 1975 to February 1976. One team inspected a random sample of applicants at 10 major international airports; the second inspected a random sample at the 12 largest ports of entry along the Southern land border. 185 malafide applicants were denied entry by the airport team and 709 were denied entry by the land team. National origin data were collected by the airport team only. (See Table I-B.)

NH David S. North and Marion F. Houstoun, The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study (Washington, D.C.: Linton & Co., Inc., March 1976). Report prepared for the Employment and Training Administration, U.S. Department of Labor.

Interviews with illegal aliens apprehended by the INS Border Patrol and by INS District Office staff in a number of major sites across the country. In addition, 50 unapprehended illegals were interviewed in New York City. (Data from this group are not included in the tables.) Nation of origin was ignored in selecting Border Patrol sample. The District Office sample was selected to correspond to the proportion of Mexican and non-Mexican aliens apprehended by the District Office staff.

K Charles Keely, Patricia Elwell, Austin Fragomen and Sylvio Tomasi, "Profiles of Undocumented Aliens in New York City: Haitians and Dominicans." Paper presented at meeting of Latin American Studies Association, Houston, November 1977.

Unapprehended illegal aliens (54 Haitians and 17 Dominicans) in New York City were interviewed in social service settings by agency personnel from November 1976 to July 1977. Included is a comparison with data (Report of Deportable Alien Form I-213) on aliens apprehended by the INS New York District office during the study period.

M Sheldon Maram, "Hispanic Workers in the Garment and Restaurant Industries in Los Angeles County," (San Diego : University of California at San Diego, Program in U.S.-Mexican Studies, October 1980).

862 Hispanic workers in the restaurant and garment industries were interviewed by Concentrated Enforcement Program of the Department of Industrial Relations of the State of California. 826 of those interviewed were undocumented, while the remainder were U.S. citizens and legal permanent residents of Hispanic origin.

V Maurice D. Van Arsdol, Jr., Joan W. Moore, David M. Heer, and Susan Paulvir Haynie, "Non-Apprehended and Apprehended Undocumented Residents in the Los Angeles Labor Market: An Exploratory Study," (Los Angeles: University of Southern California, Department of Sociology and Anthropology, Population Research Laboratory, May 1979). Report prepared for the Employment and Training Administration, U.S. Department of Labor.

2,905 unapprehended illegal aliens of Hispanic origin were interviewed as potential clients of the One Stop Information Center, Inc., an agency which assists qualified immigrants in the regularization of their status.

CEN Carlos Zazueta, Research Associate, CENIET, Mexican Workers in the United States: Some Initial Results and Methodological Considerations of the National Household Survey of Emigration, draft, March 1980.

Project undertaken in 4 stages--3 border surveys and a National Household Survey. Border surveys were conducted during 3 different seasons to account for varying migration levels. Surveys involved interviewing migrants as they were deported by U.S. immigration officials. National Household Survey was conducted in December 1978 and January 1979; it obtained general demographic data as well as specific data on migration patterns.

C Wayne Cornelius, "Mexican and Caribbean Migration to the U.S.: The State of Current Knowledge and Priorities for Future Research," prepared for the Ford Foundation, 1978. (Also used Cornelius, "Mexican Migration to the United States: Causes, Consequences and U.S. Responses, July 1978.)

Conducted survey of return migrants by interviewing random sample of adult male residents of 9 carefully selected rural towns in Jalisco, Mexico, traditionally a major sending region.

P Guy Poitras, Border Research Institute, Trinity University, San Antonio, "The U.S. Experience of Return Migrants from Costa Rica and El Salvador," paper prepared for Select Commission on Immigration and Refugee Policy, August 1980.

A national household sample of 2,200 was used in each country to identify a total of 573 return migrants who were then interviewed to obtain detailed information on different aspects of their migration.

RM Josh Reichert, Department of Anthropology, Princeton University, and Douglas Massey, Office of Population Research, Princeton University, "Patterns of Migration from a Rural Mexican Town to the United States: A Comparison of Legal and Illegal Migrants," March 1979.

Collected data on group of return migrants in 2 phases during 12-month period in 1977-1978 in Guadalupe, Michoacan, traditionally a major sending region in Mexico. First, a house-to-house census of the town was conducted to provide a basis on which comparisons could be made. Second, the authors questioned a diverse groups of residents who provided them with detailed information on the migration patterns, both legal and illegal, of other residents.

Table I-A

SAMPLE CHARACTERISTICS OF MAJOR STUDIES OF UNDOCUMENTED/ILLEGAL ALIENS

	B	D	INS	NH	K
Number of respondents	919	4,490	894	793	71
Location of survey	Mexico: 8 border towns 1 border town	Nationwide	Nationwide	Nationwide	New York City
Dates of survey	Nov. 1975	1978	Sept. 1975 to Feb. 1976	May to June 1975	Nov. 1976 to July 1977
Legal migrants included in sample[1]	No	No	No	No	No
Apprehended/ unapprehended[2]	A	A	Denied admission	A	UA
Entry technique[3] (percent)					H DR
EWI	100	78.5	-	70.7	1.9 5.9
VA		21.5		29.3	94.5 88.3
other					
National origin of respondents					54 Haiti 17 Dominican Republic
Mexico	All	3637	25	381	
other		853	139	412	
State of origin in Mexico (percent)	Guanajuato 26.3 San Luis Potosi 16.9 Jalisco 9.9 Zacatecas 9.1 Michoacan 8.9 Durango 4.6	NA	NA	Jalisco 11.6 Chihuahua 11.2 Michoacan 10.2 Zacatecas 9.4 Guanajuato 8.1 Coahila 6.4	-

KEY TO ABBREVIATIONS:

A:	Apprehended
CR:	Costa Rica
DR:	Dominican Republic
EH:	Eastern Hemisphere
ES:	El Salvador
EWI:	Entered Without Inspection
G:	Garment workers
H:	Haiti
IW:	Illegal workers
LW:	Legal workers
MEX:	Mexico
NA:	Data not available
NC:	Data not comparable
NR:	No response
NYC:	New York City apprehended
PA:	Previously apprehended
PRA:	U.S. citizens, permanent resident aliens
R:	Restaurant workers
UA:	Unapprehended
VA:	Visa abusers (see note, Table I-A, footnote 1)
WH:	Western Hemisphere, except Mexico

M	V	CEN	C	P	RM
826	2,905	300,000 (household) 93,507 (border)	1,000	573	2,617
Los Angeles	Los Angeles	Mexican households U.S.-Mexico border	Jalisco, Mexico	Costa Rica and El Salavador	Michoacan, Mexico
June to Nov. 1979	1972 to 1975	Oct. 1977 to May 1979	1975 to 1976	Fall 1979	1977 to 197
Yes	No	Yes	Yes	Yes	Yes
UA	UA	Border: A Household: A and UA	A and UA	A and UA	A and UA
NA	35.1 64.9	NA	93 7	ES CR 41.7 1 58.3 99	NA
572 75	2687 218	All	All	314 Costa Rica 259 El Salvador	All
NA	Jalisco 24.3 Michoacan 9.7 Chihuahua 8.6 Zacatecas 8.0 Durango 6.6 Sinaloa 5.7	Guanajuato 17.9 Jalisco 13.9 Chihuahua 12.6 Zacatecas 11.8 Michoacan 8.4 Durango 5.0	Guanajuato Michoacan Jalisco Zacatecas Chihuahua (top 5 states)	-	-

[1] Data in RM and M studies distinguish between legal and illegal migrants; data in C, CEN and P studies do not.

[2] Return migrant surveys (C, CEN, P and RM) include both apprehended and unapprehended migrants, and data do not distinguish between the two groups.

[3] "VA" includes those who enter legally and violate the terms of their visas or those who enter with false documents or by false statements. "Other" includes VA, legal migrants, or those who refused to answer.

DEMOGRAPHIC CHARACTERISTICS OF UNDOCUMENTED/ILLEGAL ALIENS

Table I-B

	D	INS[1]		MH	K		
		A	B		H	DR	NYC
SEX (percent)							
Male	82	55.7	45.1	90.8	40	56	59.9
Female	17	44.3	54.9	9.2	60	44	40.1
AGE (years)							
Male	25.2	29	27		NC	NC	NA
Female	27.1	31	28				
Average	25.6			28.5			
MARITAL STATUS[3] (percent)							
TOTAL							
Married	37.5		NA	47.4	37.0	41.2	61.4
Single	50.7			47.0	46.3	23.5	29.7
Other	11.8	3.0		5.5	9.3	29.4	9.0
MALE							
Married	37.5				55.0	44.4	61.8
Single	53.6	58.9			45.0	22.2	32.4
Other	8.9				0.0	33.3	6.4
FEMALE							
Married	38.2				30.0	42.9	61.2
Single	38.1	56.6			53.3	28.6	25.9
Other	23.7				16.7	28.6	13.0
FORMAL **EDUCATION** (percent)							
0-4 yrs.	NA	NA	NA	30.0	7.4	23.5	NA
5-8 yrs.				40.2	22.2	35.3	
9-12 yrs.				20.8	38.9	29.4	
13+ yrs.				8.9	24.1	11.8	
No response					7.4	0.0	
Average				6.7			

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[1] The INS data is divided into those who applied at airports (A) and those at the southern border (B).

[2] The grouping of years of formal education in the Maram study is somewhat different than those in other studies but is included for purposes of comparision. The categories include 0-6, 7-9, 10-12, and 12+ years of formal education.

[3] "Other" includes migrants who are divorced, widowed or separated, or those who refused to answer.

	M^2		V	CEN	C	P		RM
	G	R				CR	ES	
SEX (percent)								
Male	26.1	82.6	64.2	85.4	75.4	77.7	54.8	80.8
Female	73.9	17.4	35.8	14.6	24.6	22.3	45.2	19.2
AGE (years)								
Male	27.3	26.6	30.2	NC				
Female	28.2	26.0	31.6					
Average	28.0	26.4	30.7		27.5	NA	NA	NA
MARITAL STATUS[3] (percent)								
TOTAL								
Married	35.5	49.6	70.5	NA		62.1	37.8	NA
Single	50.5	42.7	24.1			30.9	40.5	
Other	14.0	7.7	5.4			7.0	21.6	
MALE								
Married	37.5	52.5	84.8		53.5			
Single	53.9	44.5	13.3					
Other	8.6	3.0	1.9					
FEMALE								
Married	34.8	38.1	43.9					
Single	49.4	33.4	44.0					
Other	15.8	28.5	12.1					
FORMAL **EDUCATION** (percent)								
0-4 yrs.			34.0		65.0	5.7	2.3	NA
	71.3	83.1			(0-3)			
5-8 yrs.			44.5	92.9	35.0	22.0	26.3	
	18.7	13.2		(0-9)	(3+)			
9-12 yrs.	7.9	2.5	17.6	7.1		39.8	48.6	
				(9+)				
13+ yrs.	2.1	1.2	3.1			32.5	22.8	
No response								
Average	5.6	4.8	6.1	4.0	4.04			

Table II-A

DURATION OF STAY OF UNDOCUMENTED/ILLEGAL ALIENS

	B[1]	NH	M[2]		V	CEN	C	P		RM
			G	R				CR	ES	
GROUP (percent)										
Less than 1 mo.	53.8	5.9	10.9	3.5						
1-7 mos.	24.1 (1-4 mos.)	17.4	3.6	5.9	11.4					81.4 (1-12 mos.)
7 mos.-1 yr.	22.1 (5-12 mos.)	11.6	2.7	3.6	7.0					
1-2 yrs.	2.9	11.7	22.8	32.4	14.3	28.5 (1+)				11.0
2-3 yrs.		16.5	60.0 (2+)	54.6	15.9					5.9
3-6 yrs.		26.9			31.8					1.7 (3+)
6+ yrs.		10.0			19.5					
Average (months)	5.5	30.0	24.8	23.9	48.5		5.5	25.1	18.2	12.4

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[1] Percentages from respondents residing in Guanajuato, the major sending state in the survey (representing 26.3% of all migrants.) Overall average calculated from average durations of stay in each state.

[2] Data include only those who return to their countries of origin, 29.4% of garment workers and 35.8% of restaurant workers.

SOURCES:

B:	Table 4, p. 96.
NH:	Table IV-6, p. 85.
M:	Table 8, p. 17, and Table 47, p. 78.
V:	Table 10, p. 47.
CEN:	P. 59.
C:	P. 114
P:	Table 6, p. 26.
RM:	Table 8.

Table II-B

PAYMENT OF REMITTANCES OF UNDOCUMENTED/ILLEGAL ALIENS

		NH[1]		M[2]			CEN[3]	C[4]		P[5]
				G	R					
Percentage of group sending payments abroad										
Average		70.0		53.9	54.4		69.1	79.0		NA
	MEX:	77.0		51.5	54.9	Single:	71.6			
	WH:	66.0	Male:	49.1	56.8	Married:	67.8			
	EH:	36.0	Female:	55.7	33.3	Other:	53.5			
	EWI:	76.0	LFB:	30.8	35.8					
	VA:	55.0								
Average amount remitted (dollars)										
Average		151		97	130		NA	170	IW:	2,266
	MEX:	169		91	132				CR:	3,173
	WH:	116	Male:	113	137				ES:	1,622
	EH:	104	Female:	92	67					
	EWI:	162	LFB:	88	86					
	VA:	115								

[1] Remittance data calculated as percentage of group making monthly payments, and average amount remitted in each payment.

[2] Remittance data calculated as percentage of group sending payments at least once every three months, and average amount remitted in each payment. "LFB" refers to legal residents and citizens born outside of the United States.

[3] Percent who remitted money during their last trip to the United States. Average amount of money sent to Mexico by absent labor force during their last trip to the United States according to the number of times they sent money, was:

1 —	$ 89.50
2 —	158.30
3 —	176.60

[4] Percent of respondents who sent money "regularly."

[5] Average is for illegal workers only. Figures represent amount remitted over the full length of the work trip; the mean length of work trips is 17.3 mos. (ES) and 25.4 mos. (CR). Data on remittances by other groups include undocumented entrants ($1,575), documented entrants ($2,688) and legal workers ($2,881).

SOURCES:

NH:	Table IV-5, p. 80.
M:	Table 15, p. 28, Table 16, p. 29, Table 54, p. 88 and Table 55, p. 89
CEN:	Table 9, p. 52.
C:	P. 179.
P:	Table 47, p. 96.

Table III-A LABOR MARKET EXPERIENCES OF UNDOCUMENTED/ILLEGAL ALIENS IN THE UNITED STATES--EARNINGS

	B[1]	NH	M		V[2]	C	P[3]	
			G	R			CR	ES
HOURLY WAGES (dollars)								
Average		2.71	2.77	2.95		2.50	4.48	3.71
Male			2.93	3.01			4.61	4.17
Female			2.71	2.71			3.94	3.18
		MEX: 2.34	2.75	2.97				
		WH: 3.05	PRA: 3.68	3.83				
		EH: 4.08						
		EWI: 2.42					EWI:	3.23
		VA: 3.40					other:	4.35
							IW:	3.97
							LW:	4.73
TOTAL EARNINGS (dollars)								
Average	731.28				5,200		15,172	8,789
Male					5,720		IW:	11,573
Female					4,450		LW:	14,586

[1] Figure calculated from data given in Table 5, p. 168. Figures in pesos converted into U.S. dollars at January 1976 currency rate of 8 cents per peso.

[2] Figures represent annual individual income.

[3] Average hourly wage represents earnings of both legal and illegal workers. The hourly wage of those working illegally ("IW") is $3.97. Total earnings figures represent migrants' total earnings during their last work trip to the United States; the mean duration of work trip for El Salvadoreans is 17.3 mos. and 25.4 mos. for Costa Ricans.

SOURCES:

B:	Table 5, p. 168
NH:	Table V-8, p. 116 and Table V-14, p. 125.
M:	Table 17, p. 32 and Table 56, p. 92.
V:	Table 23, p. 84.
C:	P. 62, Mexican Migration to the U.S.
P:	Table 29, p. 64.

Table III-B LABOR MARKET EXPERIENCES OF UNDOCUMENTED/ILLEGAL ALIENS IN THE U.S.--PAYMENT AND UNIONIZATION

	B		NH	K			M		P	
				H	DR		G	R	ES	CR
i) CASH PAYMENT (percent)										
Average	7.5		22.1	12.9	29.4		10.2	16.0	NA	
						Male:	8.6	12.0		
						Female:	10.7	35.7		
		MEX:	24.2			**MEX:**	10.9	15.1		
		WH:	16.6			**PRA:**	3.6	1.4		
		EH:	26.1							
ii) UNION MEMBERSHIP (percent)										
Average	NA		16.4	22.2	35.3		0.7	4.1	4.2	13.1
		MEX:	10.1			**MEX:**	0.9	4.0		
		WH:	29.5			**PRA:**	4.8	17.0		
		EH:	17.3							

SOURCES:

i)

B: Table 6, p. 170.
NH: p. 137.
K: p. 8.
M: Table 20, p. 36 and Table 73, p. 115.

ii)

NH: pp. 137-8.
K: pp. 7-8.
M: Table 25, p. 44 and Table 62, p. 101.
P: Table 38, p. 80.

Table III-C LABOR MARKET EXPERIENCES OF UNDOCUMENTED/ILLEGAL ALIENS IN THE UNITED STATES AND COUNTRY OF ORIGIN--OCCUPATION[1]

	B[2]	NH[3]	M[4]		V[5]	CEN	C	P	
			G	R				CR	ES
White collar									
United States		5.4	1.3	3.2	10.1			30.0	19.3
Country of Origin	3.3	17.6	17.4	9.6	25.9				
Blue collar									
United States		55.2	80.1	18.4	74.1		13.7	46.3	33.1
Country of Origin	26.0	41.5	39.3	27.8	56.1				
Service									
United States		20.6	14.1	70.6	15.3			20.0	45.2
Country of Origin	22.5	5.2	22.6	27.9	8.9				
Farmers and farm managers									
United States		18.8	4.5	7.8	0.5		40-50	3.5	1.9
Country of Origin	48.2	35.7	20.7	34.7	9.1	62.0			

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[1] Percentage distribution of those who reported employment in United States and country of origin in standard job categories. Housewives, students and retired persons are excluded. "Service" includes private household workers.

[2] Does not include the 118 persons who classified themselves as "self-employed."

[3] Data for 628 respondents exclude 148 not employed in country of origin, 1970-75.

[4] First U.S. job reported by 377 garment workers and 287 restaurant workers. Job in country of origin reported by 213 garment workers and 218 restaurant workers.

[5] U.S. jobs reported by 1,688 respondents and job in country of origin reported by 1,493.

SOURCES:

B: Table 3, p. 162.
NH: Table V-3, p. 104.
M: (G) Table 31, p. 52 and Table 33, p. 54.
(R) Table 68, p. 109 and Table 70, p. 111.
V: Data from Table 18, pp. 66-68 used to compute percentages.
CEN: p. 58
C: pp. 194-95.
P: Percentages calculated from data in Table 24, p. 54.

Table IV-A

IMPACT ON SERVICES OF UNDOCUMENTED/ILLEGAL ALIENS--TAXES

	B		NH[1]	K[2]			M[3]		C	P	
				H	D		G	R		ES	CR
Social Security taxes deducted (percent)											
Average	66.7		77.3	57.4	76.5		91.5	86.2	65.2	45.2	69.7
		MEX:	74.5			MEX:	90.4	86.4			
		WH:	79.7			PRA:	98.8	95.9			
		EH:	82.3								
Federal income taxes deducted (percent)											
Average	74.4		73.2	64.8	82.3		NA		64.0	18.5	55.7
Filed U.S. tax returns (percent)											
Average	NA		31.5	25.9	70.5		33.1	38.7	NA	NA	NA
		MEX:	22.3			MEX:	33.5	37.8			
		WH:	43.0			PRA:	83.3	82.7			
		BH:	54.8								
		VA:	49.0								
		EWI:	23.9								

[1] Social security taxes and U.S. income taxes withheld by most recent employer; filing of at least one U.S. tax return since January 1970.

[2] Filed U.S. tax return in 1976.

[3] Taxes withheld were not specified.

SOURCES:

B:	Table 6, p. 170.
NH:	Pp..142-145.
K:	Table 20.
M:	Table 35, p. 58, Table 36, p. 60, and Table 72, p. 114.
C:	Table 8, p. 226.
P:	Table 48, p. 98.

Table IV-8 IMPACT ON SERVICES OF UNDOCUMENTED/ILLEGAL ALIENS--GOVERNMENT TRANSFER PAYMENTS

	B	NH	K		M		V	P	
			H	DR	G	R		ES	CR
Welfare									
Average	3.2	0.5	0.0	5.9	NA		7.8	1.2	2.2
							Male: 5.8		
							Female: 11.3		
							MEX: 8.1		
Unemployment insurance									
Average	NA	3.9	12.9	29.4	6.5	2.9	NA	1.2	7.3
		MEX: 3.6			MEX: 6.4	2.7			
		WH: 5.6			PRA: 38.3	35.5			
		EH: 1.4							
Food stamps									
Average	NA	1.3	3.7	5.9	NA		NA	NA	

SOURCES:

B: Table 6, p. 170.
NH: P. 146.
K: Table 20.
M: Table 37, p. 61 and Table 74, p. 116.
V: Table 26, p. 89.
P: Table 49, p. 99.

Table IV-C IMPACT ON SERVICES OF UNDOCUMENTED/ILLEGAL ALIENS--PU

	B	NH[1]	R[2]	
			N	DR
Hospital use				
Average	7.8	27.4	44.5	76.5
		MEX: 22.0		
		WH: 37.8		
		EH: 29.7		
		VA: 41.0		
		EWI: 22.1		
Hospital insurance				
Average		44.0	24.0	58.8
		MEX: 45.1		
		WH: 44.2		
		EH: 37.3		
Children in U.S. schools				
Average	0.9	3.7	12.9	29.4
		MEX: 2.7		
		WH: 5.5		
		EH: 4.0		
		VA: 7.1		
		EWI: 2.2		

SC

[1] Percentage of those who reported one or more visits to U.S. medical facilities and those who reported having one or more children enrolled in U.S. schools. Hospital insurance was only that deducted from paychecks.

[2] Percentage of those who have children in U.S. schools and those who personally used a clinic or a hospital.

[3] Percentages of those owing bills to county hospitals and those who have one or more children in U.S. schools.

ALIENS--PUBLIC SERVICES

DR	V^3	P	
		ES	CR
76.5	37.3 Male: 38.3 Female: 35.7 PA: 44.4	7.3	24.5
58.8	NA	25.1	40.4
29.4	21.1 Male: 19.6 Female: 23.7 PA: 25.0	23.9	41.1

SOURCES:

B: Table 6, p. 170.
MH: p. 145 and p. 147.
K: Table 20.
V: Table 26, p. 89.
P: Table 49, p. 99 and Table 48, p. 98.

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CHAPTER X: CLOSING THE BACK DOOR--THE NEED FOR EMPLOYER SANCTIONS*

Introduction

The history of the United States has been marked by the consistent use of large numbers of foreign laborers to fill low-level, unskilled jobs to enhance economic growth. Since the second half of the nineteenth century, however, when the free flow of immigrants was subjected to regulation, many unskilled foreign workers have entered the United States illegally. Faced with the lack of economic opportunity in their homelands and the greater opportunity here, ambitious men and women have continued to migrate, undeterred by U.S. immigration law.** This illegal migration--perpetuated by the mutually beneficial relationship between U.S. employers anxious to profit from a low-cost labor source and foreign workers eager to work--has been facilitated by a lax federal commitment to the enforcement of immigration law.***

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*Staff Document

**See Chapter IX for further discussion of illegal migration.

***The notable exceptions to this policy have occurred when political pressures have closed the door to illegal migration through public and financial support of the Immigration and Naturalization Service enforcement efforts. This has happened only twice in U.S. history: during the worst years of the depression and in the mid-1950s.

Over the years, the U.S. government has failed to enforce the laws barring illegal entry effectively and evenly and has in effect perpetuated a "half-open door" policy--officially forbidding illegal entry while essentially condoning it through lax enforcement. Now, in 1981, the United States finds itself in the ambiguous position of espousing respect for the law as a cornerstone of society, while refusing to make the enforcement of its immigration laws a priority. Until a more meaningful federal commitment to enforcement is made, illegal migration will continue to undermine the most valued ideals of this nation--the integrity of the law and the fundamental dignity of the individual. It is this undermining of national values that poses the greatest threat to U.S. society, not the displacement of U.S. workers or use of social services by undocumented workers.* Jobs taken by undocumented workers sometimes do result in the displacement of American workers, and the presence of these aliens in the work force does have a depressing effect on U.S. labor standards and wages in some locales and some sections of the economy. While these conclusions of the staff are disputed--at least as to emphases--by some researchers, no one denies that national ideals are being compromised. In the absence of effective enforcement measures, the United States encourages the continued violation of immigration law and the existence of an underclass lacking effective protection under U.S. laws.

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*See Chapter IX for a discussion of the impact of undocumented/ illegal aliens in the U.S. workforce and social services.

Commission Consideration of Increased Enforcement

In recognition of this lack of federal commitment to the enforcement of immigration law and the damage it does to U.S. society, the Select Commission recommended, as a first step, increased resources and additional personnel for INS enforcement efforts along the border and in the interior. Concluding that the Service's budget for enforcement "has not kept pace with its increasing workload,"[1] the Commission recommended such actions as increasing the numbers and training of Border Patrol personnel, adding light planes and helicopters for border surveillance, creating regional border enforcement posts and instituting a fully automated system of nonimmigrant document control to "allow prompt tracking of aliens and to verify their departure."[2] But as it made these recommendations to enhance the enforcement capabilities of the Immigration and Naturalization Service, the Commission acknowledged the difficulty even a substantially improved enforcement effort would have in curbing illegal migration as long as legal employment opportunities exist in the United States.

In the last few years, even though there have been modest successes on the part of INS interior enforcement efforts and of the Department of Labor's Wage and Hour Division,* it has been impossible to stop what appears to be expanding flows of undocumented/illegal aliens and their employment in agricultural, service and other relatively low-wage industries, or in construction and light manufacturing.**

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*See Attachment A at the end of this chapter for those laws currently used against the employers of undocumented/illegal aliens and the testimony of Joe Razo at the Los Angeles hearing on February 5, 1980, for an explanation of how the California Department of Labor enforces wage and hour legislation in connection with undocumented workers. Also see the testimony of Donald Elisburg, concerning the federal efforts targeted on likely employers of undocumented/illegal migrants (San Antonio and New York public hearings.)

**The Select Commission also recommended increased enforcement efforts in the area of existing wage and working standards legislation. See U.S. Immigration Policy and the National Interest, p. 70.

While neither additional Border Patrol agents nor airplanes will, of themselves, curb illegal migration, it is clear that conventional enforcement when enhanced or concentrated can increase apprehension along the borders, at ports of entry and in the interior.* Research interviews with apprehended and unapprehended aliens indicate that individuals will continue to go into debt and risk increased enforcement efforts to obtain employment--temporary or long-term--in the United States. Neither the risk of entry without inspection or letting one's visa lapse, nor the cost of being smuggled or buying fraudulent documents appear to deter undocumented/ illegal migrants.

In the words of the 1976 Domestic Council Report on Illegal Aliens the "availability of work and the lack of sanctions for hiring illegal aliens is the single most important incentive to migration, creating the pull portion of the equation."[3]

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*The deterrent value of conventional enforcement cannot be precisely measured, but the shift from one to two person patrol units in the Chula Vista Border Patrol Sector resulted in an increased number of observed or sensor-detected entries with fewer units either deployed or able to respond.

Donald Elisberg, Assistant Secretary of Labor for Employment Standards, testifying before the Select Commission in San Antonio, noted that the absence of any general statutory prohibition against hiring undocumented/illegal aliens "makes enforcement of our employment standards protection very difficult. The absence of sanctions against the employment of undocumented workers, he said, "gives employers the ability to foster an attitude of contempt for the law." "It is very clear that unless you have a strong hold on employers . . . you can't ever get a handle on this problem. . . ."[4]

Employer Sanctions Recommendaton

Convinced by research and testimony that the federal commitment to enforcing immigration law must extend beyond increasing enforcement efforts if the flow of undocumented workers is to be curtailed, a majority of the Commission's members urged the passage of legislation making it illegal for U.S. employers to hire aliens not authorized to work in the United States.[5] The Commission concluded that the present law, which makes it illegal for an alien to enter the United States without inspection or be here without proper documentation, but not for that alien to work after he has entered this country* is a hopelessly insufficient deterrent.

The availability of work pulls the undocumented/illegal alien into the United States. Although not discounting the push factors of population pressure, limited economic opportunities and political instability in sending countries, Commission members recognized that the only credible deterrent to the flow of ambitious men and women who will spend a lifetime of savings and take great personal risks to find work in the United States is employer sanctions legislation based on a system of identification for all workers.

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*While twelve states have employer sanctions statutes which proscribe "knowing" employment of undocumented/illegal aliens, the only federal law that actually prohibits employers from hiring nonauthorized aliens is the Farm Labor Contractor Registration Act. This law makes it illegal for contractors or farmers knowingly to employ undocumented aliens on their work crews, and requires those who do hire migrant workers to be certified by the federal government. The 1952 Immigration and Nationality Act, as amended, which remains the immigration law of this nation, specifically exempts the employers of undocumented/illegal aliens from prosecution for violating Section 274 of the Act which makes the willful importation, transportation or harboring of these aliens a felony. This exemption, known as the "Texas Proviso," specifies that the employment of undocumented workers does not constitute harboring.

Fourteen Commission members, including the eight members of Congress who were on the Commission, recommended employer sanctions legislation despite the obstacles such legislation has faced in Congress during the past decade. Aware that five major employer sanctions bills* have failed to get through Congress (although two did pass the House), the Commission, nevertheless, concluded that without an enforcement tool to make the hiring of undocumented workers unprofitable, efforts to prevent the participation of undocumented/illegal aliens in the labor market would continue to meet with failure. The Commissioners sought to ensure that their new employer sanctions proposal would surmount the major criticisms leveled at previous sanctions bills--that the requirement that employers not knowingly hire ineligible aliens lacks a clear and precise method of employer compliance that:

As for the state laws, they have been enforced only in California and Kansas. In California, enforcement has been effectively suspended, although a U.S. Supreme Court decision (DeCanas v. Bica, 1976) found that the states possess authority to regulate employment relationships in order to protect workers. The sole case of successful prosecution occurred in Kansas in 1977 and resulted in a fine of $250 against an employer.

*See Attachment B for a listing of these bills and others dealing with proposed employer-sanctions legislation.

- is readily enforceable;
- places only a reasonable burden on employers while providing them with clear defense; and
- does not rely on discretionary and potentially discriminatory employer decisions.

In several meetings, the Commissioners debated what an appropriate method or mechanism for establishing eligibility and indicating employer compliance should be. Although consensus was not reached, the debate pinpointed the factors that must be weighed in selecting a reliable and nondiscriminatory means of establishing employment eligibility. In the words of its final report, the Commission:

> holds the view that an effective employer sanctions system must rely on a reliable means of verifying employment eligibility. Lacking a dependable mechanism for determining a potential employee's eligibility, employers would have to use their discretion in determining that eligibility. The Select Commission does not favor the imposition of so substantial a burden on employers. . . . Most Commissioners, therefore, support a means of verifying employee eligibility that will allow employers to confidently and easily hire those persons who may legally accept employment.[6]

Consideration of Employment Eligibility

In recommending that employer sanctions legislation be based on a reliable means of verifying employment eligibility, the

Commission addressed not only previous congressional criticism, but also the concerns voiced by many of those who testified in the Commission's public hearings. Employers who testified on the concept of employer sanctions supported a simple system that would not shift the burden of enforcement to the employer. Richard Gaven, Director of Education for the National Restaurant Association, summarized employer concerns when he said:

> We feel strongly that if the government, for whatever reason, decides that any solution must involve the business community, then it should also include some mechanism which will provide the employer with clear and objective guidelines upon which he can base his actions with assurance that he is acting within the law.
>
> In all fairness, the government must provide the means by which an employer can easily determine whether a person is eligible for employment and this guidance should be clear, simple, objective and not increase the businessman's already considerable recordkeeping, paperwork, and other administrative burdens.[7]

Commission members, in agreeing with this point of view, also believed that a verification mechanism would guard against employer discrimination in cases where potential employees might appear or sound foreign. If employer sanctions were instituted in the absence of such a mechanism the Commission feared:

> widespread discrimination against those U.S. citizens and aliens who are authorized to work and who might look or sound foreign to a prospective employer. . . . Without some means of identifying those persons who are entitled to work in the United States, the best-intentioned employer would be reluctant to hire anyone about whose legal status he/she has doubts.[8]

Thirteen of the Commissioners called for some reliable non-discriminatory method of verifying employee eligibility but they did not vote on the more technical question of the specific method for doing so.[9] In a discussion which focused on the use of existing forms of identification, improving the security of these forms (for example, a counterfeit-resistant social security card) and new, secure identifiers (a call-in data bank or work- eligibility card), Commission members remained divided. Some Commissioners believed that the use of one or more existing forms of identification would provide a reasonably reliable and nondiscriminatory means of determining employment eligibility; others supported only more secure documentation, including entirely new methods of verification, such as the call-in data bank.

These differences of opinion among Commission members had been found earlier in the testimony of public hearing witnesses and the research of Commission consultants.

Representatives of organized labor and some members of the business community supported "an effective identification system based on the social security card;"[10] others argued for "a universal identification program"[11] or an "employment identity card"[12] as inseparable from employer sanctions without specifying what that particular mechanism would be. Still others opposed any national work identification card citing potential abuse of individual civil rights and liberties.[13]

Because such differences of opinion could not be resolved within the span of the Commission's life, no recommendation was made to the Congress and the President in this area and the final decision on an employment verification mechanism was left to be determined in the legislative process, where it would be settled even if the Commission had made a recommendation. To ensure that the work already done by the Select Commission in this area is available to the Congress as it begins consideration of this issue, the following pages present employee eligibility/employer responsibility systems considered by Commission members over the past 18 months. These systems designed by Commission staff are based on five separate mechanisms for determining employment eligibilty, ranging from the use of existing forms of identification to a work eligibility card. They represent staff efforts to ensure that employer sanctions will substantially curb the flow of undocumented/illegal aliens without placing an unfair burden on U.S. employers or those entitled to work in this country.

Employee Eligibility/Employer Responsibility Options

In drafting the various employee eligibility/employer responsibility (EE/ER) options, the Commission staff was guided by five major principles which its members agreed should underlie an employment-verification mechanism:

- reliability;
- uniform and nondiscriminatory application;
- minimal disruption of existing employer and employee patterns;
- protection of civil rights and liberties; and
- cost-effectiveness.

Although each of these five criteria presented its own unique problems, none was more difficult to resolve than those presented by the protection of individual civil rights and liberties. The staff, well aware of the great concern over an employment eligibility system's potential/possible effect on individual liberties, therefore, sought the opinions and advice of scholars and civil libertarians before drafting its EE/ER options.

Concern for Civil Rights and Liberties

A special consultation on June 16, 1980 was held to ensure that the staff understood the reservations many civil libertarians had concerning the new, more secure forms of verification being evaluated--the call-in data bank and work-eligibility card. Alan Westin of Columbia University warned of the threat posed by modern data bases and urged that if legislation were enacted to establish a master labor-force data base, that the civil liberties and rights of U.S. citizens be protected by a constitutional amendment. John Shattuck of the American Civil Liberties Union, although endorsing the Westin proposal, opposed the adoption of any kind of card or data base, fearing that a work eligibility card would be irresistible to the government and private enterprise for use as a standard universal identifier. Mr. Shattuck also saw a danger of civil rights abuse in an employee eligibility/employer responsibility system. He warned of possible employer discrimination[14] against U.S. citizens and permanent resident alien minority workers because of the threat of penalties for employing undocumented/illegal aliens and argued that any employer sanctions approach infringes on two basic rights: the right of an employer to hire any legal worker he/she chooses and the right of a worker to accept any job offer.

Past discussion of providing protection against potential discrimination along with the institution of employer sanctions legislation has usually focused on enhanced efforts under Title VII against national origins discrimination. Although this may be possible, persons concerned with the issue point directly at the limited possibility of bringing charges against employers who might discriminate on the basis of alienage. The right of the federal government to regulate employment on the basis of citizenship or alienage has not been firmly decided, but it has been a rule of the Civil Service Commission from 1883 to 1976 and in practice by executive order since that time. In addition, annual congressional appropriations legislation since 1938 has also banned the employment of noncitizens while making large exceptions.[15]

What is most important to the concern expressed here is the Supreme Court decision in Espinoza v Farah Manufacturing Co., Inc. [414 U.S. 86 (1973)] that Title VII does not prohibit discrimination by private employers on the basis of alienage. Although Title VII renders national origin an unlawful basis of discrimination, the Court refused "to interpret the term 'national origin' to embrace citizenship requirements," and declined to find congressional intent to make discrimination against aliens in private employment unlawful.[16]

The Supreme Court has indicated that "in an appropriately defined class of positions a state might be able to require citizenship as a qualification for office."[17] It upheld New York statutes imposing a citizenship requirement for state police officers and public school teachers.[18]

> Although some type of identification system seems, at first glance, to be a proper and fair manner in which to implement employer sanctions legislation, the system must not be looked at in isolation. A narrow viewpoint concerning its effectiveness in connection with employer sanctions ignores the full effects of this approach. In recognition of this, the Domestic Council Committee Report examined the consequences of an identification system and concluded that it "limits certain freedoms we enjoy and have been unwilling to yield. . . . The need for control and the commitment to certain individual freedoms need not and should not constitute a tradeoff.[19]

A report issued by the U.S. Commission on Civil Rights, The Tarnished Golden Door, Civil Rights Isues in Immigration, noted the danger that:

> the passage of employer sanctions laws could lead to discriminatory practices involving especially members of the Spanish and Asian heritage communities."[20]

By a majority of 3 to 2, the Commission on Civil Rights remained unconvinced that such employment discrimination could be cured by the development and implementation of a national identification card or even a national work permit system. As both involve a "compulsory identification document and centralized data bank,"[21] The Civil Rights Commission instead felt they raised the issue of civil liberties violations. Its report notes that problems with these systems are not limited to "the creation of information files on individual

Americans or the types and amount of data collected by the federal government. There are also problems with respect to who has access to the data and their use of that information."[22]

The Select Commission staff acknowledges the potential threat to civil rights and liberties presented by an employee eligibility/employer responsibility system. Nevertheless the staff is equally concerned about the discrimination against and exploitation of workers that now exist, and is fearful of what may result from continued inaction on illegal migration.

Much of the objection to an employer sanction and employment eligibility system is based on four doubtful premises:

- First, that employers will be left with discretionary decisions that inevitably will be discriminatory;
- Second, that the civil rights violations that exist now are minor compared to the ones that would occur under the proposed system;
- Third, that there can never be enough safeguards to eliminate the threat of governmental control; and
- Fourth, that development and implementation of any system--no matter what kind--would be exceedingly costly and a waste of the taxpayers money.

Establishing Eligibility

The systems that were considered by the Select Commissioners would be universally applicable--employers could not avoid requiring and checking the evidence of eligibility of all persons. Past legislation sometimes rested on assertions of the right to work by citizens and aliens, with only the latter requiring some evidence or potential follow up. In all options examined by the Commission, citizens and aliens alike would be required to participate in the system, and employers could not fail to check on some employees without being guilty of non-compliance and attendant penalties.

More importantly, the critical decision about eligibility would not be left to the employer. An applicant would be presumed to be eligible until the government told the employer to the contrary. While this leaves some potential for subjective discrimination against applicants who might be foreign in appearance or speech, in fact eligible alien employees would have more protection against discrimination than they have now. The employer could not use the excuse that he "thought the applicant was an illegal" when faced with charges of discrimination.

Existing Discrimination

It is a myth that persons with an ethnic or racial minority background do not now face some discrimination by employers who seek to protect themselves from INS visits or who attempt to comply with state employer sanctions laws or who simply feel that they should not give work to undocumented/illegal migrants. Particularly in the Southwest, INS district offices receive many requests, both formally and informally, from employers to establish that an applicant is a permanent resident alien or other alien with authorization to work in the United States. Since INS can rarely process these requests in less than a week (sometimes the time gap is much greater), many qualified aliens are either losing time on the job or the job itself as employers instead turn to persons who can prove that they are U.S. citizens. One California attorney who advises businesses on immigration issues summed up current practices by saying:

> Many employers screen their work force zealously and as a result greatly discriminate against people of foreign extraction. Some employers make employees go to INS with an attached form G-641 to verify the authenticity of their permanent resident alien card. The employee will stay all day at a crowded INS office and never get prompt verification, if any at all. Usually, though not always, the employers who are the most zealous are those who offer

> attractive jobs with better than average wages. . . . Persons who argue that employers will do just that appear to have never heard the often repeated argument that employers prefer foreign workers including illegal migrants because they are diligent and productive employees."[33]

This does not even touch the discrimination that exists when an "Anglo" assertion of citizenship is accepted, while others are required to come forward with documentary proof. A system with a clear mechanism for establishing eligibility and requiring no discretionary judgments by employers would clearly remove much of this existing pattern of discrimination.

Governmental Abuse

Although the staff has been explicit in laying out areas of potential injury to civil rights and civil liberties, it is convinced that the development of a computer data base with or without a card for the purpose of verifying employment eligibility can be a mechanism in favor of civil rights and a bulwark to the abuse of privacy generally. The argument that there can never be enough safeguards to eliminate this threat of governmental control is often repeated and raised about any new government endeavor. It simply ignores the reality of the world in which we live. There are going to be private and public data banks, to which access must be controlled.

There will be continuing circumstances that require identification for persons dealing with private business and with the government.

What protects our society and individuals against this type of abuse or "governmental control" is the existence in our traditions, our habits and our laws of a concern for civil rights and privacy, in addition to explicit protections. The national will to resist governmental control or private misuse of personal information is the only mechanism that will protect either public or private parties from such abuse. The absence of a card or a national data base will not prevent the United States from succumbing to authoritarian controls. The Japanese American citizens and residents, who were rounded up and detained during World War II were not denied their rights because of the existence of an identification system, but because of a policy that was accepted by the American people at that time. Since then we have learned a great deal as a people, and as a society we have endeavored to express our tradition of personal freedom and individual rights and liberties in specific laws that offset the increasing organization and rules imposed by both private and public institutions on our lives.

The employment eligibility card or a national data bank should be an occasion to give further explicit statement--in legislative language and, perhaps, as proposed by Alan Westin, in a constitutional amendment--to the rights and protections due individuals in our society.

The absence of satisfactory identification is currently working a hardship upon, if not actually discriminating against, certain minorities in the employment setting. The decision to institute a national system of employment eligibility and employer responsibility is premised on the benefits that will accrue to the total society from curbing the flow of undocumented/illegal migrants, supporting the rule of law and respect for it, and ending a set of circumstances that allow for the exploitation of an underclass of persons. This decision, of course, should be accompanied by strict legislative limitations on the use of the employee eligibility card and on access to and use of the data base behind it. Legislation, if not a constitutional amendment, making it a violation of a fundamental right of privacy to use this data base for purposes not previously authorized by the individual who provided the information would be a further guarantee of the privacy of Americans. Those who fear potential government control and abuse often ignore what is already happening in the private sector relating to the unauthorized sharing of personal information. The gathering of useful information and the issuance of various identifiers will continue and should do so where it serves an individual need or a general public purpose. The change that should accompany these information-collection and identification activities is explicit legislation to underscore personal rights and to institute penalties for those who ignore them.

The Cost of Doing Nothing

Continuing to do nothing, the staff believes, could lead to more discrimination, more social and political tension. Although not likely, it is even possible that failure to act in the near term would produce more severe measures later. As one witness before the Commission warned:

> If we do not now get control of this problem . . . and continue to let it run, the anger and resentment of this country--when 91 percent already believe strong measures should be taken--will lead inevitably to the adoption of the sort of internal passport that you have in France, where you go from one city to another, you sign in with the local gendarme to tell him you're there, you can be stopped by a policeman on the street to check with your internal passport. I hope we never reach that stage, but we'd better get ahold of that problem now, or we will.[24]

The staff believes that the use of an employee eligibility/ employer responsibility system can avert any such an eventuality with an approach that could be turned to the advantage of the civil rights and liberties of all U.S. citizens. It further believes that such a system--if based on an easy, reliable mechanism for employment verification and equipped with the appropriate safeguards--will not impose an undue burden on the U.S. workforce and actually will reduce the likelihood of employer discrimination.

The United States must face the fact that the population in many of the economically poorer countries in our hemisphere is growing exponentially, far outstripping the ability of these homelands to provide work, let alone jobs with some chance of upward mobility for their citizens. The United States must take steps to demagnetize the attraction that pulls workers to this country, and that attraction is jobs. The Commission believes that the potential for serious public injury and enormous economic, social and political costs in the future is great, for within a decade if no action is taken, there could be twice as many as the six million undocumented/ illegal aliens estimated to be the high number for those in the United States in 1978.

The five options presented in the following pages are the result of staff efforts to reflect the civil liberties reservations and other needs and concerns heard over the past 18 months, with the staff's view that an employee elgibility/ employer responsibility system is at the heart of any effort to curb significantly illegal migration and protect the U.S. welfare. Each option is presented with its particular strengths and weaknesses, including the estimated costs for system design and implementation.

Option 1. A System Based on Existing Forms of Documentation

Coverage

A system based on the showing of documents evidencing eligibility to work would apply uniformly to all newly hired employees (an estimated 70 million annual job changes or hires) and employers.

Application Procedure

Every newly hired employee would be required to show the employer documents verifying his citizenship, permanent resident alien status or alienage with authorization to work in the United States. These documents would include birth certificates, alien registration cards, military discharge papers or specific INS authorization to work, as is the case under the Farm Labor Contractors Registration Act (FLCRA).* However, unlike current FLCRA provisions, employers would not make judgments about the authenticity of the documents except in instances where there appeared to be a glaring mismatch between the information contained in the document and other information supplied by the applicant. They would make a permanent notation or record of the nature of the document and its number or other identifying element for retention in their personnel records. In addition, they would have to maintain a record of persons already employed as of the effective date of the EE/ER program and a second listing of new hires since the effective date.

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*Under the current FLCRA when in some instances documents could not be secured, state employment service offices have issued identification/eligibility cards to migrants on the basis of affidavits of other persons as to their citizenship in the United States.

Enforcement

Federal agents would make field checks to assure employer responsibility. They would have access to the personnel files and could determine whether or not the employer was complying with the requirements and maintaining proper records for new hires. This could be done by agents from several agencies--specifically the Immigration and Naturalization Service, the Wage and Hour Division of the Department of Labor and the Internal Revenue Service. However, questioning and arrest of employees suspected of being undocumented/illegal migrants would remain the province of INS.

A high level of self-enforcement or voluntary compliance by employers is assumed for this system. This is expected to bring about two effects--some undocumented/illegal migrants will return home because they see increased risks or costs in remaining and attempting to find employment under the new system; and the free entry of undocumented/illegal aliens into the work force could be reduced by as much as 50 to 70 percent, so that enforcement efforts might be targeted in a more effective manner than at present.

Implementation Time and Cost

This system could be introduced within twelve months of legislative action. It would require only the writing of regulations, an educational and publicity campaign to familiarize workers and employers with its requirements and some training of federal personnel. Costs for these initial preparations should be less than $2 million. The addition of 600 investigators for INS and the Wage and Hour Division, plus a small appeals system to aid persons denied employment or employers challenging citations or charged with violating the law would have an annual estimated operating cost of $23 to 28 million.

Reliability

This system would rely on self-enforcement in large measure--both from employers wishing to comply with the law and from undocumented/illegal migrants fearing greater risks in evading the system or alleging eligibility. It is only a threat to undocumented workers; it does not depend on an effective review of the documents presented, although employers (with some exceptions such as those who employ short-term workers) could be required to maintain copies of these documents that legally can be copied. The opportunity for passing fraudulent documents or legitimate documents procured through fraudulent means would be very great. For example, social security cards have long been issued without personal interviews although this policy changed in 1978. Recent reports of the Government Accounting Office and the Office of the Inspector General of the Department of Health and Human Serives have indicated that social security cards continue to be issued to undocumented/illegal migrants with fraudulent documents. Under the pre-employment enrollment systems discussed under Options 3, 4, and 5, such attempts to establish eligibility by fraud would be subject to the scrutiny of personnel trained to question persons and make assessments of authenticity. Employers could be charged with violations on the basis of not keeping adequate records or clearly falsifying records, although the latter might require the testimony of undocumented/illegal migrants found in his or her employ.

A certain proportion of the documents themselves would be fraudulent and the employer would not have a mechanism to tie the person to the documents presented except in a very rough way. Nevertheless, the use of existing documents would be a clear improvement over the present situation in which no proof of eligibility can be asked for and nothing can be expected from employers.

Protection of Civil Rights and Liberties

Requiring one or two among a spectrum of documents to establish eligibility to work should fall fairly evenly on the American workforce. If the enforcement experience of the Farm Labor Contractor Registration Act enforcement is a guide, those who would have the greatest difficulty in producing adequate documentation would be citizens who were not born in a hospital in the United States and also had never served in the military. Persons who entered this country as aliens are much more careful to keep INS-issued documents such as their alien registration card, naturalization papers or work authorization.

By removing the discretionary judgment from the employer, there is less likelihood of discrimination. However, employers who have doubts about the eligibility of applicants and want to minimize the possibility of work interruptions or turnover in personnel from INS visits might discriminate against persons who appear to be foreign in appearance or speech.

Cost Effectiveness

A system utilizing existing documentation could be implemented more quickly and at a lower cost than the other options presented. It would apply equally to all sectors of the economy. Its deterrent value would depend on the degree of voluntary compliance by employers and the frequency of field inspections by federal agencies. The benefits derived would appear to justify the relatively small federal expenditures. It would be difficult to demonstrate the efficiency of this system in advance as an argument to overcome the reluctance of employers, if they resisted the nominal increase in record keeping.

Option 2. A System Based on a Statement of Eligibility

Coverage

A system based on a statement of eligibility would apply uniformly to all newly hired employees and to all employers.

Application Procedure

Every newly hired employee in the United States would be required to fill out a form such as that on the following page, providing personal identification information to establish his/her identity and employment eligibility. To fulfill their obligation under this system, employers would have to file a monthly form on each new hire with an employee eligibility/employer responsibility office,* keeping copies for their employee records.

Enforcement

Enforcement would begin with the screening of forms and the maintenance of records in regional locations. This would be done on a systematic sample of all forms filed, plus a selected sample emphasizing certain geographical locations and industries. If the information on a form submitted by an employer differed from that obtained from local offices of vital statistics, both employee and employer would be sent letters instructing the employee to report within two weeks to the Immigration and Naturalization Service (if an alien) or to an

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*No new agency is being proposed by the staff. The network of the Social Security Administration or the Department of Labor Employment service offices would be suitable for this purpose and for the preenrollment and record-keeping functions of the eligibility systems mentioned in Options 2, 3, 4 and 5.

EE/ER office (if a citizen) to resolve the problem.* If the employee did not report or the problem was not resolved, the employer would receive a letter stating that the employee was ineligible and should be dismissed.

Implementation Time and Cost

A system based on a statement of eligibility could be introducted within twelve months of legislative enactment. Annual operating costs of $75 to $95 million** would cover approximately 1,500 employees to review the statements of eligibility and follow up with government records agencies, employees and employers; an additional 600 field investigators; and an appeals system which probably would include administrative law judges and a streamlined appeals procedure.

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*Enforcement, including the record keeping required by the statement of eligibility system, could be handled by the Wage and Hour Division of the Department of Labor's Employment Standards Administration or by the Immigration and Naturalization Service. The INS would continue to have primary responsibility for the apprehension and deportation of undocumented/illegal migrants.

**Figures for this and the remaining three options were developed by and should be attributed to Select Commission staff, although they drew heavily from the breakdown of functions and budget development prepared by the Department of Labor in their paper, "A Work Authorization Enrollment and Verification System: A Technical Working Paper" (Washington, D.C.: October 1980). Actual budget figures considered, but not voted on by Select Commission.

Reliability

The statement-of-eligibilty system depends for deterrence on undocumented/illegal migrants' fear of detection and subsequent reluctance to sign any "official" statement that might focus the attention of INS or any other government agency on them. As only a sample number of the statements would be reviewed, the system would operate on a threat basis rather than by screening all new employees.

Los Angeles and numerous other California counties operate a similar program related to aliens applying for social welfare benefits. These aliens must fill out a form, which is sent to INS for verification. In most instances, undocumented/illegal aliens choose to withdraw their applications when they learn that their identities will be checked. In 1979, the Los Angeles County Department of Public Social Services reported that on 17,684 occasions, undocumented/illegal migrants sought and were denied welfare benefits--16,725 denied welfare benefits--16,725 refused to complete the form to be sent to INS and only another 959 completed the form but were subsequently ruled to be ineligible by INS.[25] Nevertheless, because there is no pre-enrollment in the system prior to accepting employment, it cannot ensure employment eligibility to the same degree as Options 3, 4 and 5 which do make use of preenrollment screening.

The principal disadvantage of a system based on a statement of eligibility would be the difficulty of applying it in the secondary labor market--that sector of the economy characterized by rapid turnover of the workforce, for example agriculture or some service jobs (such as restaurant and hotel workers). Although vital records are less likely to be counterfeited since the government will check statement information with the issuing agency, the time required for this check--potentially 6 to 8 weeks, figuring monthly reporting and some time for agency responses to phone inquiries--makes the system ineffective against the undocumented/illegal worker employed on a short-term basis.

Protection of Civil Rights and Liberties

In its favor, a system based on a statement of eligibility would not delay employment and would be nondiscriminatory in application, imposing the same burden on the entire U.S. workforce--U.S. citizens and lawful permanent resident aliens included. Further, as employees would be presumed eligible unless the EE/ER unit informed an employer otherwise, employers are technically relieved of the responsibility for determining eligibility and they would have no basis for discriminating against persons who later might be determined to be ineligible. Because eligibility would be absolutely determined after employment, however, employers who feared sanctions might still discriminate against persons who seemed "foreign" in appearance or speech, in order to avoid turnover or disruption of operations from an INS visit. Thus, although this system would not raise the civil liberties and privacy issues of the card or data bank systems which follow, it might well result in violations of the civil rights of potential employees, despite the prohibition against discriminatory employer practices in Title VII of the Civil Rights Act of 1964.

Cost Effectiveness

The statement-of-eligibility system could be implemented quickly and at a lower cost than the other options presented. Further, it would avoid the initial enrollment and document-securing bottlenecks possible in other systems that require preenrollment before seeking employment. Nevertheless, the enormous volume of paper--70 million statements--that would have to be filed and processed each year as the result of such a system; the paperwork burden it would add to that already imposed on employers by the federal government; its inability to actually test employment eligibility for more than a sample of workers and its reduced utility for the secondary labor market which many believe employes the largest number of undocumented/illegal workers appear to overwhelm the benefits it provides in the way of low cost and facilitated employment.

Option 3: System Based on a Call-In Data Bank

Coverage

A call-in data bank system would cover all persons seeking employment in the United States, those seeking new jobs or those entering the labor market for the first time.

If implemented across the board, the total population needing an identification number could be as high as 50 million applicants in the initial year. In the second year, the volume of those persons obtaining identification numbers would be reduced by about half, because many of the job changers would be repeaters and would thus already be included in the systems. The number for subsequent years would drop to about one-quarter of the initial volume.* This and other options calling for pre-employment enrollment would preferably be phased in beginning with younger employees, so that the 16 to 35 year age range was phased in first, since it is believed most undocumented/illegal migrants fall within this range. In this manner, the more than 100 million members of the U.S. work force could be enrolled over a 7 to 8 year period.

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*This is based on a Social Security Administration estimate of the total number of new hires and consequently new contribution accounts set up annually by the number of persons either taking multiple new jobs or changing jobs more than once during the year.

Application Procedure

Under a data-bank system, an employee eligibility/employer responsibility office* would be responsible for enrolling persons and maintaining information on their eligibility. All persons seeking employment in the United States would go to the EE/ER unit with documentary evidence** to establish their citizenship, permanent resident status or other basis for employment eligibility. Their documents would be reviewed and additional, corroborating information would be obtained.

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*No new agency is being proposed by the staff. See the first footnote under Option 2.

**In most instances, these documents would be birth certificates, baptismal certificates, military discharge papers or alien identification cards. In cases where vital records were lost, affidavits from associates and some evidence of extended residence in the United States (tax returns, employment or school records) could be substituted.

The Commission staff acknowledges the reservations about the use of birth certificates as identifying documents. George A. Gay, Acting Chief, Registration Methods Branch, Division of Vital Statistics of the National Center for Health Statistics (HHS) in a paper prepared for the Select Commission states that birth certificates are not identification documents "since they do not contain any information by which to 'identify' the bearer as being the person named on the record. The bearer's identity must be established by other means." Citing the ease with which birth certificates may be obtained in some states, Mr. Gay concludes that "no matter what steps are taken to improve the birth registration system, the birth certificate will never become an identification document. It is a document that reflects the facts of a person's birth. It does not contain any identifying information and should never be used as an ID." See "The U.S. Birth Registration System," (March 26, 1981), included in appendixes submitted with this report.

Unless questions remained, a unique eligibility number would be immediately issued to each individual. That number, along with limited personal information (such as sex, date of birth, weight, height and mother's first name but not an address), would be entered in a data bank. Prospective employees would give this eligibility identification number, along with some personal information, to prospective employers who would transmit it by phone to an EE/ER regional office and receive immediate verification (estimated at two minutes per transaction) of the applicant's employment eligibility as well as a transaction number to record. The transaction number would be in a separate file along with the unique eligibility number and identifying number for each employer. This file could be analyzed for a low level of activity by an employer or an unusually high amount of activity for an individual eligibility number. However, it would not be available to other government agencies as a locator file for persons.

Implementation Time and Costs

The system, which would require a seven-year period for design/development/procurement would have nonrecurring design and implementation costs estimated at $80 to 100 million over six years. It could be phased-in, focusing first on all new entrants and job changers in the 16 to 35 age group where conventional estimates place most undocumented/illegal migrants. For instance, in order to facilitate the enrollment in an efficient manner, the first-year enrollment would be restricted to all new entrants and job changers in the 16 to 18 age bracket, which would still total an estimated 17 million persons.

Annual operational costs would total $235 to $295 million for the enrollment, verification and data-base maintenance functions, involving an estimated 7,000 work years for enrollment and verification personnel, technicians and supervisors, plus 300 field investigators. The annual operating costs should decline by approximately 25 percent when the enrollment volume drops after seven years.

Reliability

Simply because it requires pre-employment enrollment with a government agency, a data-bank system should eliminate large numbers of undocumented/illegal migrants from the U.S. labor market. It is unlikely that most undocumented workers would be willing to risk an employment eligibility interview, and would thus be automatically removed from the marketplace. Further, a call-in system would provide for an accurate, almost immediate verification of eligibility (estimated at two minutes per transaction) and thus reach the short-term hires ignored by a system based on a statement of eligibility. The system, however, would be subject to the errors which would result when handwritten employee information was orally transmitted by the employer to an EE/ER verification clerk and when verification numbers were given orally by the EE/ER staff person and then copied into the employee's record.

Protection of Civil Rights and Liberties

Under a call-in data bank system, employment eligibility could be verified without the use of any identifying document which, despite legislative prohibitions, might be used for other identification purposes. By not requiring a card or other physical form of identification, the data-bank system would somewhat alleviate the fears of civil libertarians regarding a national identity card. At the same time, it would also relieve employer doubts as to eligibilty and thus avoid intentional or unintentional discriminaton against persons whose appearance or speech seemed "foreign."

What a call-in system could not do, however, is avoid the distrust felt by a significant segment of the public concerning any data bank capable of providing identifying information on large numbers of individuals. However, the minimal amount of information collected, the absence of location data and a differential pattern of access to the data file with personal information from that containing the transaction codes (which would be available for review by very few persons) should limit the interest of other government agencies and reassure the public about the misuse of this data bank. To safeguard civil liberties and protect privacy under a call-in system, the information recorded by the EE/ER office would be strictly limited and stringent security methods would have to restrict access to the information available in the data systems. Even with such protections, however, pre-employment enrollment and supplying information for employer verification of eligibility would be resented by some U.S. citizens and permanent resident aliens as an unwarranted intrusion of their privacy and an impediment to their ability to contract for work immediately.

Cost Effectiveness

The costs of a call-in data bank system would be extremely high. In the words of the Federal Advisory Council on False Identification--"It is certain that any new system designed to verify and store identity information on over 200 million people would be extremely expensive and require a major national effort."[26] The costs of both designing and operating the system would be very high, with the cost of the verification process permanent, even though the enrollment costs would decline after the first seven years of operation. Further costs would, of course, result from the demand for documentation required for pre-employment enrollment. This demand would place additional burdens and resulting costs on federal, state and local government agencies as millions of individuals requested vital records information.

Another drawback to a call-in data bank is that the system cannot be applied universally to all industries. Modification of the system (through the issuance of secure cards) might be required for persons primarily in agriculture, construction or some service areas of the economy where persons are hired on a daily basis or the sites for hiring and employment are physically separated. Although phone calls would still be possible, any delays in completing hiring would be more disruptive to normal practices. A further problem is that of false rejection due to improper provision or transmittal of information among the applicant, the employer and a verification clerk. Even with an appeals system in place, an eligible applicant prevented from working for even two days would have a serious claim for damages.

These negatives, however, must be considered against the high level of accuracy that could be provided by a call-in system --the most accurate means of verifying eligibility among the systems with pre-employment enrollment--and the speed with which verification could be given by the EE/ER data bank--two minutes. Depending upon the requirement for accurate, rapid verifications and taking into account the fact that a call-in system avoids some civil rights concerns, the high costs of this system might be justified.

Option 4. System Based on a Counterfeit-Resistant Card

Coverage

A system based on a counterfeit-resistant card would be applied uniformly to all members of the U.S. workforce--including U.S. citizens and aliens authorized to work--and to all employers.

Application Procedure

All persons seeking employment would enroll with the EE/ER unit, as in Option 3. Unless questions remain regarding identity or eligibilty, a counterfeit-resistant eligibility card could be produced and mailed to the applicant within three working days of the enrollment interview.* Job applicants would establish employment eligibility by showing their cards to prospective employers. Employers would record new employee names and card numbers and report them quarterly to the EE/ER office,** as well as maintain a file for review by field investigators.

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*Prompt receipt of the eligibility card is a major concern. Production of secure cards requires greater control than can be maintained over a network of 250 EE/ER offices. However, card production at regional centers would add to the delay in card receipt. To overcome this delay and the problem of lost cards, an alternate method of temporary eligibility verification would be needed for the occasions when an eligible worker would otherwise be denied a job.

**No new agency is being proposed by the staff. See the first footnote under Option 2.

The counterfeit-resistant card would carry the minimum information necessary to identify the person: name, date of birth, sex, a photograph* and an identifying number unique to that individual. Additional information (for example, place of birth or mother's first name) would be maintained in a computer data base to assist field personnel in identifying imposters or persons using a loaned card to establish eligibility. Addresses for mailing the cards would be removed from the records after one month, when receipt of mailed cards could be assured. This information would not be available to other government agencies or private organizations and could be accessed only by specified enforcement personnel through their district offices. Inquiries from the field would receive responses within two hours.

Enforcement

Field enforcement would continue much as it does now except Wage and Hour Division and INS investigators could check an employer's file for questionable numbers and interview individual employees who had recently been hired to verify identity and eligibilty. Multiple use of eligibilty card numbers and false numbers found in quarterly employer reports would direct field investigators to certain employers and employees. Employers who failed to require proof of eligibility from new hires, did not maintain or falsified numbers on their records of employment eligibility or conspired with undocumented/illegal migrants to secure eligibility cards through fraud would be subject to citation, fines or prosecution.

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*The card could also be issued without a photograph. However, the absence of the photo would allow it to be more successfully "loaned" to others and could slow verification of identity by field investigators.

Implementation Time and Costs

Start-up costs for system design and development would total $50 million over a 6 to 7 year period. This expenditure would be followed by $40 million spent on hardware, training and other up-front items while annual operating costs would total $165 to $215 million. These annual costs would cover:

° approximately 5,000 work years by intake clerks, data entry operators, technicians and supervisors handling and managing the system that would enroll 17 million applicants annually;

° production of applicants' cards at an average cost of $1.00 per card;

- data transmission and computer maintenance costs;
- the salaries of an additional 300 field investigators; and
- an appeals system for persons denied eligibility and employers protesting administrative citations for violations.

After seven years these costs should decrease by 30 percent owing to lower enrollments and card production costs.* The maintenance costs of the system should rise slightly as the data base increases to hold an eventual 300 million files.

Reliability

Since a counterfeit-resistant card system involves preenrollment, it should discourage many undocumented/illegal migrants--who would fear detection during the pre-employment process--from even attempting to enter the U.S. labor force. Further, it protects the employer trying to conform with the provisions of an employer responsibility law and provides an easy, rapid means of establishing an employee's eligibility. Even with a photograph, the card would not serve as absolute indentification; persons of similar appearance could impersonate one another.

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*Cards should have a useful life of 7 to 10 years, but earlier replacement would be needed for frequent job changers, lost cards and in instances where physical characteristics had significantly changed. In many states, driver's licenses need to be renewed every 5 to 7 years and such a procedure, on a staggered basis, could be utilized.

Protection of Civil Rights and Liberties

A card-based system relieves employers of having to determine eligibility and therefore avoids intentional or unintentional employer discrimination against persons whose appearance or speech seems "foreign." Further, it largely removes the problem of false rejection of eligibles, which could result from human or computer error under the data-base system. But, it still raises fears for U.S. civil liberties. Many who testified before the Commission argued that a card could be used for other than identification purposes, despite initial legislative prohibition. In its consideration of civil rights issues in immigration, the U.S. Civil Rights Commission found there was "little in the Privacy Act to prevent premeditated abuses of power through the misuse of recorded information, particularly where internal agency uses are concerned."[27]

It is evident that having a data base on so many people may well attract other uses and that a work-eligibility card might ultimately become a national personal identifier in the absence of explicit and strictly enforced statutory prohibitions. To avoid these eventualities, only limited personal information would be retained in the data base, stringent security methods would be required to restrict access to the information available in the system and legislation would have to stipulate that eligibility cards could not be asked for outside the employment application setting (except by INS or Department of Labor investigators). Many who oppose any type of work eligibility card, however, remain unconvinced that such safeguards will be effective.

An employment system based on a work-eligibility card would also be likely to meet with a good deal of general public resentment. Requiring all prospective employees--U.S. citizens and lawful permanent residents included--to establish and prove employment eligibility will impose a burden that many will find an irritant and a threat to their personal freedoms.

Cost Effectiveness

Like the call-in system, a card-based system would require seven years for design and development. The costs of establishing and operating such a system would be significant and remain so over time. Additional costs would also be generated for federal, state and local government agencies by the demand for documentation needed for pre-employment enrollment.

Despite the high operational and start-up costs and the civil liberties concerns associated with a work eligibility card, a card-based system nevertheless provides the most rapid means of establishing employee eligibility and is the least disruptive of existing employment application processes. Finally, the societal cost of doing nothing must be considered. In the opinion of the staff, these factors, if new civil liberties safeguards are legislated, outweigh the costs associated with the system.

Option 5. System Based on the Social Security Card

Coverage

All persons seeking employment--including U.S. citizens and lawful permanent residents--will bear the same verification burdens. All employers must fulfill the same responsibilities.

Application Procedure

This system parallels the one previously discussed under Option 4, except for the use of the social security number and the absence of a photograph. Like the counterfeit-resistant card system, the data base for a social security card system would have additional information on individuals that could be accessed from the field offices of specified enforcement agencies (INS, the Department of Labor's Wage and Hour Division). To meet their responsibilities, employers would record the card number of each new employee and file this information quarterly with the appropriate enforcement agency.* Although the focus would be on reissuance of the social security card to new hires in the workforce, this would probably be just the first part of a general reissuance of the social security card to all users.*

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*The staff proposes no new federal agency. See the first footnote under Option 2.

Enforcement

The quarterly reports of employers would be sampled for evidence of compliance in reporting and to spot the use of nonexistent numbers or unusual multiple use of the same number (and name). Enforcement investigators would have access to the cumulative record of employees hired subsequent to the institution of the system and could interview employees when they had probable cause to assume some pattern of evasion on the part of employees and employers.

Implementation Time and Costs

This option would involve either the issuance and reissuance of a new, more secure social security card or a work eligibility card using the social security number. Estimated operating costs for enrollment, data-base maintenance and card production would be $135 to $165 million.* This does not include substantial, indirect costs for reviewing and correcting existing social security records, which would be necessary as improper use and issuance of social security numbers was uncovered. Development costs would be greater than the two previous systems, because of the need to integrate the new communications and access requirements with the existing social security telecommunications and data base operation. The development time frame might also be stretched from 7 to 9 years.

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*Some persons have argued that it would be most effective--in terms of cost and implementation time--over the short-run of the next 15 years, if the social security number were used for the employee eligibility card, but that a separate data base should be created for the EE/ER system. This would obviate the need to immediately enhance the existing Social Security computer data base and telecommunications system.

Reliability

The preenrollment interview required under this card-based system would, as under the other preenrollment employment systems, discourage many undocumented/illegal workers from even attempting to enter the workforce. Basing a system on a card, without photographs and which would be reissued only after lengthy use, loss or name change, however, would result in a less satisfactory means of identifying the bearer of the card than that provided by the work eligibility card already described. Nevertheless, it would provide for a rapid means of establishing employment eligibility. It is assumed that in the design of the enrollment and card-issuance system and in the retraining of personnel that the necessary reforms outlined in a report of the departmental Inspector General would be instituted.*

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*These costs are staff estimates, which are derived in part from figures supplied by the Social Security Administration and the previously mentioned study by the Department of Labor.

Protection of Civil Rights and Liberties

Because of this lower level of reliability, employers less confident of an applicant's eligibilty might discriminate against workers who are entitled to work legally in the United States. In principle, however, this approach relieves employers from having to determine eligibility and should result in less intentional or unintentional discrimination against persons whose appearance or speech seems "foreign" and who later might be determined to be ineligible.

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*For nearly forty years, the Social Security Administration issued social security numbers without requiring any evidence of citizenship or lawful permanent resident status. Only since 1974 has social security number issuance become more secure. However, the report notes continuing problems with intake screening and opportunities for improper issuance of social security numbers. "A Review of the Social Security Administration Social Security Number Issuance System," Washington, D.C.: Office of the Inspector General, Department of Health and Human Services, February, 1981.

Developed to establish an account in which payroll tax contributions could be made and later to prove the eligibilty of an employee for participation in social security benefit programs, the social security number has become an individual's identification number in hundreds of federal and state record-keeping functions, as well as in such public and private institutions as banks, hospitals and schools.*

Specific provisions were legislated under the Privacy Act of 1974 to control this expanded use of the social security number for the indexing and identification of individuals.[28] They would not, in the staff's opinion, be sufficiently protective of individual privacy rights if the use of the social security number is expanded to a work eligibility card. Use of an improved social security card would therefore require the same type of protective restrictions placed on the more secure work-eligibility card--strictly limited access to the information lodged in the system and a stipulation that the card could not be requested outside the social service benefit or employment application setting, except by specified government investigators. While the card can be made equally secure to other cards, if the existing date base and communications system is merely expanded, then greater care will have to be taken to control access for information input and retrieval than is presently the case. Redesign of the system to afford use for employment eligibility purposes would provide the opportunity for including essential internal controls already recommended by the Inspector General.

Requiring all prospective employees to establish and prove eligibilty as part of the employment process would also impose a burden that many will find an irritant and an intrusion of their freedom. Such resentment, however, would probably be less than that which would greet a work eligibility card since the public has had considerable experience with the social security card and/or number and would be more likely to be receptive to the extension of its use than to a completely new system and an additional card.

Cost Effectiveness

Requiring eight years for design, development and procurement, the costs of this system--both in terms of start-up and operating costs--would be high. Indirect costs to the Social Security Administration for merging its other processing and its data base with this new responsibility could be considerable. Further, some additional expense would be involved in simply verifying social security numbers. The benefits that would accrue from the secure social security card and improved issuance procedures are spread across many programs. The investment for the purpose of restricting employment opportunity to citizens and eligible aliens would have to be followed by or joined with other funding to complete the issuance and reissuance of all social security cards in the improved, secure form.

These high costs and the problems already noted regarding such a system's reliability and potential for civil liberties abuse must be evaluated along with the benefits of relying on a social security-type card: the rapid determination of employment eligibility, the minimal disruption of existing employment processes and the public's familiarity with the social security number.

STAFF CONCLUSIONS CONCERNING AN EE/ER SYSTEM

A great many persons, including several Select Commissioners, prefer utilizing a revamped, counterfeit-resistant social security card for the purpose of verifying employment eligibility.* They regard it as a common identifier, already widely used by government and private business. Its deficiencies as an identifier can be removed through the improvements mentioned above and the institution of a careful interview and review of documentation for the issuance or reissuance of the new social security card. Persons concerned about the abuse of privacy rights point to the expanded use of this card as clear evidence of the threat to personal rights through the distortion of this single-purpose, benefit-recording enumerator. Its proponents see this multiple use as a strength and as a further reason to reissue it in improved form with explicit protection regarding its involuntary use and access to the personal information in the data bank which stands behind it. Although many persons only think of their social security number and not of the insecure card that they were once issued, most Americans with a driver's license are already carrying that number on their personal license. Volunteering a social security number or a driver's license as identification--such as for cashing a check--is already a familiar act. Producing an improved social security card as a means of establishing employment eligibility would be only a small additional burden for most Americans, and some would welcome having it as a readily accepted form of identification that could be volunteered.

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*For the views of Father Theodore Hesburgh, Senator Edward M. Kennedy and Representative Peter Rodino, see U.S. Immigration and the National Interest, Appendix B.

Several disadvantages of the improved social security card have caused the Commission staff to conclude that the single-purpose, work eligibility card might provide a better deterrent to illegal migration. First, the implementation of a revamped social security card would take longer. Even if a concurrent decision were made and funding provided to reissue all social security cards, redesign of the existing computer data base and telecommunications system would take 1 to 2 years longer and the competing needs of other social security number-based programs might delay the provision of the card to all workforce members. Second, the large amount of data collected and retained by the general social security system as well as its near total inclusion of the adult population would make this data base more subject to criticism--both from persons fearing its use for other government enforcement efforts or control purposes and from individuals worrying about the large number of agencies and personnel who would have access to the data base. Finally, unless a photograph were added, the social security card would not be as useful for prompt and ready identification of individuals as would the general eligibility card with a photograph.

When considered along with all four other options, the staff believes that, despite the high costs involved, the great reliability of the eligibility card as proof of employment eligibility makes it a possible basis for an effective EE/ER system. This reliability should ensure that only those individuals who are eligible to work do so, while avoiding employer discrimination and possible false rejection of eligible workers. In cases where an individual's speech or appearance might make an employer suspect his/her eligibility, a work eligibility card would ensure the right to work. A card system also meets two other staff requirements --that of universal application and minimal disruption of existing employment practices. An EE/ER system based on a work eligibility card can be imposed on the entire U.S. workforce and uniformly implemented in any sector of the U.S. economy with minimal change to standard hiring procedures.

As for the civil liberties concerns that have so troubled those who have attempted to design a card-based system, the staff believes that potential abuses could be avoided by a constitutional amendment protecting civil liberties, as recommended by Alan Westin of Columbia University at the Commission's consultation on June 16, 1980. Aware, however, of the delay created by the years it takes to amend the U.S. Constitution and the urgent need for an employee eligibility/employer responsibility system, the staff recommends the initial establishment of a work-card system under a statute, providing full civil liberties protections. As soon as time permitted, a constitutional amendment would reinforce the statute's protections.

In the interim, any statute instituting an EE/ER system should include the following civil liberties protections:

- Explicit instructions concerning "single-use" of eligibility cards;
- Exclusion or segregation of current address data to prevent misuse of the system as a missing persons locator;
- Clear criteria for procedures within the system, emphasizing fairness to all applicants;
- Clear limitations on use of the system by public officials and others and explicit penalties for abuses;

- Allowance for due process challenges to system decisions; and
- Provision for a nongovernmental review board of distinguished persons to protect system integrity;

With these protections in place, the staff feels a card-based system will present no danger to individual civil liberties and should actually result in the protection of the civil rights of those who might otherwise be discriminated against by employers wanting to avoid penalties or disruption of their operations.

Timetable for Implementing the Staff's Card-Based System

The staff does not believe that this nation should wait seven years before initiating employer sanctions legislation--the time it will take to make a work-card system operational. It therefore recommends that the EE/ER system be implemented in three stages: an initial system based on a statement of eligibility, a second-phase based on a counterfeit-resistant verification card for certain age groups and eventual expansion of card coverage to the entire U.S. workforce in the third phase.

These stages would be spread over the following timetable:

Year X	Legislation passes
Year 1	Implementation of statement system Design phase for secure-card system begun Complementary enforcement measures instituted Undocumented/illegal migration curbed 30 to 40 percent
Year 2	Statement system operative
Year 4	Contracts awarded for procurement of card-based system
Year 6	Beginning of enrollment for card-based system Testing of card-based system
Year 7	Phase-in of card-based system by age groups
Year 13	Completion of enrollment of all workers in card-based system Phase-out of statement system Undocumented/illegal Illegal migration and illegal participation in labor force negligible

ATTACHMENT A

Fair Labor Standards Act

Purpose	Coverage	Enforcement
Protection of wages and working conditions, including minimum wage, maximum hours, and overtime pay.	"Employer" includes any person acting directly or indirectly in the interest of an employer.[1]	For willful violations: fine of not more than $10,000, imprisonment for not more than six months.[6]
	"Employee" means any individual employed by an employer [2] and engaged in commerce.[3]	Damages: Employer liable for unpaid minimum wages or unpaid overtime compensation and an additional amount for liquidated damages.[7] Secretary of Labor authorized to supervise payment, in which case right to private action on the part of employee is terminated.[8]
	Numerous exemptions to "enterprises" covered, including agriculture, fishing, and domestic service.[4] Maximum hour requirements have further exemptions for seamen, loggers, and broader exemptions for activities related to agriculture.	Injunction: District courts may enjoin violations of Section 215, for cause shown.[9]
	N.B. These definitions make no distinction on the basis of citizenship status.	

SOURCE: Citations in these tables are from United States Code, 1976 Edition (Washington, D.C.: U.S. Government Printing Office, 1977). Amendments are cited from United States Code, 1976 Edition, Supplement III (Washington, D.C.: U.S. Government Printing Office, 1980).

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[1] Title 29 203 (d)
[2] Title 29 203 (e)
[3] Title 29 206 (a)
and 207 (a) and amendments
[4] Title 29 213 (a) and amendments
[5] Title 29 213 (b) and amendments
[6] Title 29 216 (a)
[7] Title 29 216 (b) and amendments
[8] Title 29 216 (c) and amendments
[9] Title 29 217 and amendments

National Labor Relations Act

Purpose	Coverage	Enforcement
Guarantees right to organize; sets standards for collective bargaining and fair labor practices of employers and labor organizations.	"Employer" includes any person acting as an agent of an employer directly or indirectly, including an agent of a labor organization, when acting as an employer.[1] "Employee" includes any employee, but specifically excludes agricultural laborers and those in domestic service from its definition, among others.[2] N.B. These definitions make no distinction on the basis of citizenship status. Recent decisions have upheld the coverage of undocumented workers under the NLRA.[6]	Prevention of unfair labor practices by the National Labor Relations Board. The Board is empowered to issue complaints, conduct hearings on alleged violations of labor practice standards and require reinstatement of employees with or without backpay.[4] In addition, NLRB can petition courts of appeal for enforcement of its orders or temporary measures it deems appropriate.[4] Any person who shall willfully resist, prevent, impede, or interfere with any member of the board shall be punished by a fine not more than $5,000 or by imprisonment for not more than one year, or both.[5]

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[1] Title 29 152 (2)

[2] Title 29 152 (3)

[3] Title 29 160 (a),(b), and (c)

[4] Title 29 160 (e) and (j)

[5] Title 29 162

[6] NLRB vs. Sure-Tan, Inc. 583 F.2d 355 (7th Cir.1978). NLRB vs. Apollo Tire, Inc. 604 F.2d 1180 (9th Cir.1979).

Federal Insurance Contributions Act

Purpose

Provides for the payment of taxes by employer and employee into the OASDI and hospital insurance funds.

In addition, provides for the deduction of a percentage of wages for the payment of the federal income tax.

Coverage

"Wages" means all renumeration for employment, with some exemptions for wages in agriculture and domestic service, among others.[1] In the case of income tax withholding, further exemptions to the definition of "wages" are added.[2]

"Employee" means any individual who has the status of an employee under common law rules.[3]

"Employment" means any service performed by an employee for the person employing him, irrespective of the citizenship or residence of either.[4] Exemptions for foreign agricultural labor and fishing, among others.[5]

Enforcement

Underpayment of tax may be adjusted or assessed and collected.[6]

An individual who fails to collect or pay over tax, or who attempts to evade or defeat tax is liable to a penalty equal to the amount evaded, not collected, or not accounted for.[7]

In addition, willful failure to collect or pay over tax constitutes a felony with a maximum fine of $10,000 and imprisonment for not more than 5 years, or both.[8]

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[1] Title 26 3121 (a) and amendments
[2] Title 26 3401 (a) and amendments
[3] Title 26 3121 (d)
[4] Title 26 3121 (b) and amendments
[5] Title 26 3121 (b) and (c) and amendments
[6] Title 26 6205
[7] Title 26 6672 and amendments
[8] Title 26 7202

Federal Unemployment Tax Act

Purpose	Coverage	Enforcement
Tax on wages goes into fund for payment of unemployment compensation.	"Employee" means any individual who has the status of an employee under common law rules.[1] "Employment" means any service provided by an employee for the person employing him, regardless of the citizenship or residence of either.[2] Agricultural labor and fishing are exempted from coverage under the Act, among others.[3] While undocumented aliens qualify for the pay-in requirements of the Act, they are specifically excluded from receiving benefits from the unemployment fund.[4] All applicants for compensation must supply uniform data or information regarding citizenship or alien status.[5]	An alien falsely representing himself as entitled to benefits under this Act would be guilty of a misdemeanor, which would be punishable by a fine not exceeding $1,000 and imprisonment not exceeding one year, or both.[6]

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[1] Title 26 3121 (d) and 3306 (i)
[2] Title 26 3306 (c)
[3] Title 26 3306 (c)
[4] Title 26 3304 (a) (14) (A)
[5] Title 26 3304 (a) (14) (B)
[6] Title 42 1307 (a)

Farm Labor Contractors Registration Act

Purpose

Provides guidelines for the registration and responsibilities of farm labor contractors to prevent exploitation of migrant workers and interference with interstate commerce.

The Act includes provisions, among others, requiring contractors to report wagesw and tax withholdings from wages[1] and a prohibition from recruiting,employing or utilizing with knowledge aliens not lawfully admitted or not authorized to work.[2]

Coverage

"Farm labor contractor" means any person who recruits, solicits, hires, furnishes, or transports migrant workers for a fee, either for himself or on behalf of another person. Exemptions made for certain types of agriculture.[3]

"Agricultural employment" follows the definition in 3121 (g) of Title 26.[4]

"Migrant worker" means any individual whose primary employment is in agricultural employment, as defined in the section cited above.[5]

Enforcement

The Secretary of Labor is authorized to investigate, gather data, administer subpenas and oaths to enforce the Act. He is required to protect the confidentiality of complainants and protect complainants from discrimination.[7] He also may petition district courts for injunctive relief.[8]

Willful violations may result in fines not more than $500 or prison term not to exceed one year, or both. Further violations may be punished by a fine not to exceed $10,000 or prison term not to exceed three years or both.[9]

The civil penalty for violations is a fine for each violation of not more than $1,000.[10] In addition, violation of the provision relating to illegal aliens may result in a fine not to exceed $10,000 or a prison term not to exceed three years, or both.[11]

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[1] Title 7 2045 (e)
[2] Title 7 2045 (f)
[3] Title 7 2042 (b) and amendments
[4] Title 7 2042 (d)
[5] Title 7 2042 (g)
[6] Title 7 2046
[7] Title 7 2050b(b)
[8] Title 7 2050a(c)
[9] Title 7 2048 (a)
[10] Title 7 2048 (b)
[11] Title 7 2048 (c)

ATTACHMENT B

EMPLOYER SANCTIONS LEGISLATION

Congress	Bill	Authors	Disposition
92nd	HR 16188	Rodino Celler Eilberg Flowers Seiberling Dennis Mayne Hogan McKevitt	Hearings in illegal aliens in House begun 5/5/71; reported to House (H.Rpt. 92-1366); passed House 9/12/72; referred to Senate Judiciary.
93rd	HR 982	Rodino Eilberg	Hearings in House begun 3/7/73; reported to House (H.Rpt.93-108); passed House 5/3/73; referred to Senate Judiciary.
94th	HR 8713	Rodino Eilberg Dodd Russo Fish	Hearings in House begun 2/4/75; reported to House (H.Rept. 94-506) 9/24/75;
	S 3074	Eastland	Hearings in Senate begun 3/17/76.
95th	S 2252*	Eastland Kennedy Bentsen DeConcini	Hearings in Senate begun 5/3/78.

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* Administration bill; companion bill, HR 9531, was introduced in the House by Representative Rodino, but no further action was taken.

NOTE: In addition to these major bills, a number of bills calling specifically for sanctions against employers who hire illegal aliens were introduced in recent Congresses, for example:

94th Congress

HR 224,257,2292,2574,3396,3737,4889,5339,5389, 5987,7211,7408,7409,7999 and S 1928.

95th Congress

HR 197,3145,5516,6525,6560,6939,7058,8452,8904,9268, 11,718, and S 993.

Footnotes

1. U.S. Immigration Policy and the National Interest, The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States, March 1, 1981, p. 46.

2. Ibid., pp. 46-58.

3. Domestic Council Committee on Illegal Aliens, Preliminary Report (Washington, D.C., December 1976), p. 42.

4. Testimony at San Antonio public hearing on December 17, 1979, pp. 124, 148.

5. See U.S. Immigration Policy and the National Interest, p. 61.

6. Ibid., pp. 66-67.

7. Richard Gaven, Director of Education, National Restaurant Association, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Chicago, IL, April 21, 1980, pp. 68-69.

8. Ibid.

9. See U.S. Immigration Policy and the National Interest, p. 61.

10. Dr. Markley Roberts, representing the concerns of the AFL-CIO, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Albany, New York, May 5, 1980, p. 11; supported by Charles S. Isley III, President, Waukegan/Lake County Chamber of Commerce and Lucille Little, Illinois Landscape Contractors Association, unpublished testimony, public hearing before the Select Commission, Chicago IL, April 21, 1980, p. 74.

11. Oscar Sanchez, the Labor Council for Latin American Advancement, Washington, D.C., unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Antonio TX, December 17, 1979, p. 99.

12. Donald Hohl, U.S. Catholic Conference, Washington, D.C., unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Chicago,IL, April 21, 1980, p. 89. Even though he did not recommend the imposition of employer sanctions, Mr. Hohl felt that an employment identity card would become "mandatory" if such sanctions were imposed.

13. Juan Soliz, staff attorney, Legal Services Center for Immigrants of the Legal Assistance Foundation of Chicago, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Chicago, IL., April 21, 1980, p. 103. See the report of the White Center for the Study of Government and the Law, "Employer Sanctions," Notre Dame University Law School, Fall 1980.

14. Dale F. Swartz of the Washington Lawyers' Committee for Civil Rights Under Law also emphasized that employment discrimination could result from any law prohibiting the hiring of illegals.

15. See Section 603 of the Treasury, Postal Service, and General Appropriations Act, 1980.

16. See 414 U.S. at 8[illegible]-91.

17. Sugarman v. Dougall, 413 U.S. 634, 647 (1973).

18. Toky v. Connelie, 435 U.S. 291 (1978)] and Ambach v. Norwick 441 U.S. 68 (1979).

19. Center for the Study of Human Rights, "Employer Sanctions, Research Study," paper prepared for the Select Commission on Immigration and Refugee Policy (Notre Dame University Law School, Fall 1980), pp. 41,44.

20. United States Commission on Civil Rights, The Tarnished Golden Door: Civil Rights Issues in Immigration (Washington, D.C.: U.S. Government Printing Office, September, 1980).

21. Ibid. p.65.

22. Ibid., p. 68.

23. Letter from Josie Gonzalez, Exq., to the Select Commission on Immigration and Refugee Policy, March 12, 1980, Letter file, Select Commission papers, National Archives.

24. Roger Connor, Executive Director, Federation for American Immigration Reform (FAIR), unpublished testimony, public hearing, San Antonio, TX., December 17, 1979, p. 237.

25. North, Enforcing, p.74; Los Angeles County, Department of Public Services, "Quarterly Report on Alien Status Verificaion Activity," Los Angeles, February 6, 1980.

26. U.S. Department of Justice. The Criminal Use of False Indentification: The Report of the Federal Advisory Committee on Fale Identification. Washington, D.C.: Government Printing Office, November 1976, p. 75.

27. The Tarnished Golden Door, p. 69

28. Ibid., p. 67.

CHAPTER XI: OUT OF THE SHADOWS--THE RULE OF LAW APPLIED*

The issue of undocumented/illegal migrants and what to do about them was a major concern of Congress when it established the Select Commission, of persons who testified at the Commission's public hearings and clearly among the Commissioners themselves. Two interrelated questions have existed from the beginning:

- What to do about those already here?
- How to curb future flows?

The Commissioners' recommendations concerning the population of undocumented/illegal aliens presently in the United States are part of its overall program to curb undocumented/illegal migration and effectively enforce the immigration laws. While favoring a legalization program for a substantial portion of the undocumented/illegal migrants already in this country following the institution of new enforcement measures, the Commissioners indicated that Congress should set qualifications (including residence) for legalization, and that aliens who were potentially qualified should be encouraged to apply in a way that would bring forth the largest number of applicants. Others would be subject to deportation proceedings if they come to the knowledge of the INS.

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*Susan S. Forbes and Ralph B. Thomas, principal authors.

The Commission recommended the legalization of these undocumented/illegal aliens because it believed this would be in the national interest of the United States. In its final report, the Commission described the benefits that would accrue from such a program:

- Qualified aliens would be able to contribute more to U.S. society once they came into the open. Most undocumented/illegal aliens are hardworking, productive individuals who already pay taxes and contribute their labor to this country.
- No longer exploitable at the workplace because they are unwilling to avail themselves of the protection of U.S. law, legalized aliens would no longer contribute to the depression of U.S. labor standards and wages.
- Legalization is an essential component of the Commission's total package of recommendations to stem the flow of undocumented/illegal migrants and will aid in the enforcement of U.S. immigration laws. It will enable INS to target its enforcement resources on new flows of undocumented/illegal aliens.
- For the first time, the United States would have reliable information about the sources (specific towns, villages and provinces) of undocumented/illegal migration and the characteristics of undocumented/illegal aliens. This information will further facilitate enforcement efforts to curtail future flows. It will also enable the United States to focus bilateral or unilateral aid and investment programs in ways that might deter migration at its source.

In developing its legalization recommendations, the Commission was guided by two major principles: that the program be consistent with U.S. interests and that it not encourage further undocumented/illegal migration. In line with these principles, the Commission recommended that:

- eligibility be limited to undocumented/illegal migrants who illegally entered the United States or were in illegal status prior to January 1, 1980, and who, by the date of enactment of legislation, have continuously resided in the United States for a minimum period of time to be set by Congress (Commission vote--16 yes);
- eligibility should be further determined by specified grounds of excludability that are appropriate to the legalization program (Commission vote--12 yes; 1 pass; 2 absent);
- voluntary agencies and community organizations be given a significant role in the implementation of the program (Commission vote--16 yes);
- the program begin when appropriate enforcement measures have been instituted (Commission vote--16 yes); and
- those who are ineligible for legalization be subject to the penalties of the Immigration and Nationality Act if they come to the attention of immigration authorities (Commission vote--12 yes; 4 no).

The Commission, having strongly recommended legalization, left many of the details of the program to Congress to formulate and to the Immigration and Naturalization Service (INS) to implement. What follows are staff proposals regarding the details of the legalization program and an evaluation of its potential impact on local communities.

Development of Options

To help the staff in formulating options, the Select Commission held a consultation on "Illegal Migrants: What do we do about those who are already here?" Participants came from local governments in California and Texas, the National Association of Counties, voluntary agencies, the Department of Health and Human Services and the Immigration and Naturalization Service. This session focused on the nature and procedures of proposed legalization programs for undocumented/ illegal aliens residing in the United States, as well as the impact which such programs might have on services provided by local governments.

The consulation participants agreed that the legalization program should have the following characteristics:

- it should be simple;
- it should be well-publicized;
- it should have a nonthreatening validation procedure which guarantees immunities from enforcement action; and
- it should be accompanied by strong enforcement efforts to encourage registration and discourage future flows of undocumented/illegal aliens.

There was considerable support for the cooperative processing of legalization cases by voluntary agencies in conjunction with INS. The model suggested was the successful Indochinese Adjustment Program in which INS interviewed a large portion of the applicants at community sites after they had been preliminarily processed by voluntary agencies. The cooperation of local groups which have credibility with the undocumented/illegal community was believed to be necessary to draw out persons to register under the legalization program.

The consultation participants also discussed eligibility requirements--particularly residency ones--and the status to be assigned to those who qualify. Many participants recommended the establishment of a single legalization status for which many undocumented/illegal aliens currently in this country could qualify. There was some sentiment, though, for the creation of a second status for persons who could not meet the residency requirement. Several persons also recommended that no more stringent grounds of exclusion be applied than those provided in the Refugee Act of 1980 for refugee admission and adjustment. Whatever the status or statuses provided and whatever the grounds of eligibility, emphasized many participants, the program must make clear to potential applicants what the eligibility standards are and what they can expect in the period after legalization.

In further developing its proposals for legalization, the staff also examined the lessons of amnesty programs in other countries. The experiences of Canada, Australia and the United Kingdom are informative. Australia, after encouraging large-scale legal immigration in the years after World War II, found that illegal immigration was also increasing. By the end of 1975, it was estimated that approximately 40,000 undocumented/illegal migrants were in the country. Publicity about the plight of these workers led to pressure for the adjustment of status of those already in Australia. The Australian Minister of Immigration and Ethnic Affairs announced a three-month amnesty beginning January 26, 1976 and ending April 30, 1976. All persons residing in Australia were eligible to have their status adjusted providing that they were in good physical and mental health and they had no criminal record in Australia or in any previous country of origin. Out of an estimated 40,000 undocumented/illegal migrants, only 8,614 came forward during the amnesty program. The following factors appear to have contributed to what appears to have been a low turnout:

- The time allotted for the amnesty program was too short and efforts at public education and outreach were inadequate. The program failed to communicate and establish rapport with people who, by nature of their illegal status, were suspicious of government action.

- The amnesty program was announced without any attempts to work closely with ethnic or migrant groups. Many of the fears could have been allayed by ethnic associations if they had been asked to participate.
- Lack of an appeal mechanism and the Immigration Department's reputation for secrecy and unfair dealing with undocumented/illegal aliens contributed towards distrust of the program.

The Canadian experience differs in some details from the Australian one. An adjustment of status program was conducted in Canada from August 15 to October 15, 1973 under which persons residing illegally were able to obtain landed immigrant status (equivalent to U.S. permanent resident alien status). The Canadian government did not intend it to be an amnesty program and does not regard it as such. The program was needed because of the unintended consequences of two other programs: the implementation of a regulation, later repealed, that permitted foreign visitors to apply for landed-immigrant status while in Canada and the establishment of an independent appeal tribunal to which anyone--regardless of immigration status--could appeal immigration decisions. Both of these actions led to the entry of many visitors who then applied for immigrant status and began appeal proceedings if their requests were denied. The result was a severe backlog of cases.

Under the adjustment of status program, any person in Canada could register with an immigration officer if he/she could prove that he/she had entered on or before November 30, 1972 and had remained in the country since that date. A pre-registration period preceded the formal program, during which prospective applicants were encouraged to register and officials learned of any potential administrative problems. During the actual program, a local immigration officer would register the applicant, issue an employment permit and schedule an interview during which the date of entry would be determined. If the applicant was found to be qualified, he/she was issued a visa. If the official decided against the applicant, an appeal could then be made to the Immigration Appeal Board.

During the course of the program, 32,015 people registered. Only 63 of those who registered were refused adjustment. Sixty percent were in Canada illegally and 40 percent had legal status of some kind. In addition, through administrative measures taken to relieve the backlogs in the appeal process, another 18,403 persons (out of 22,996 cases) received landed immigrant status. According to the final report issued by the Canadian government on its program, the publicity and actions undertaken by those running a program of this type were very important. The government realized that it had to convince potential registrants that they had nothing to fear if they registered and everything to fear if they did not. The Adjustment of Status Report emphasized that the publicity stressed that this was the last opportunity for nonimmigrant visitors and undocumented/illegal immigrants to normalize their status and that those who did not come forward faced an increased risk of deportation. The report concluded:

> The government's word alone will not persuade; its actions must also. It can neither equivocate on its decision to terminate the program on date X, nor can it hesitate to admit an illiterate Mexican migrant worker. Equivocation and hesitation will alienate all concerned.

The legalization program in Great Britain also stemmed from changes in immigration policy. Until 1971, the government had the right to deport those undocumented/illegal migrants who had overstayed their visas but not those who had entered illegally. In 1971, the law was changed to permit deportation of both groups. This change meant, however, that those who had entered illegally were suddenly deportable for offenses that had not previously permitted that action. Announcing its program in April 1974, the government decided to legalize the status of some of those caught between the two policies.

Under the initial terms of the program all of those persons who

- had entered illegally prior to January 1, 1973, the effective date of the 1971 legislation;
- had stayed in the country continuously since that date; and
- had come from Pakistan or one of the Commonwealth countries

could have their presence legalized. Later, by judicial order, the category of immigrants eligible for amnesty was broadened to include a small group who had fraudulently entered through ports of entry by the use of forged or altered domuments or other illicit means.

By the time the program had been in operation for more than three years, a total of 2,409 persons had applied, and, of these, 1,685 were accepted for adjustment of status.

The small number can be explained, in part, by the narrow eligibility provisions of the program. The British government suggested that there were relatively few undocumented/illegal aliens--by their definition--in the country; the majority were visa abusers who were not able to participate in the program. Other factors were also responsible:

- Enforcement of immigration laws in the United Kingdom is very lax, and it made little sense to come forward--unless one had a clear-cut amnesty case--since there was little chance of being apprehended.
- By applying for amnesty, undocumented/illegal aliens ran the risk of deportation since the program did not offer a fail-safe inquiry process.
- The provisions of the program were so confusing that British officials have acknowledged that this was a problem.

The lessons from these adjustment/amnesty/clemency programs are clear. First of all, the eligibility requirements and costs and benefits of participating or not participating in the program must be made explicit. They must protect U.S. interests without serving as an unnecessary barrier to legalization. Second, there must be an outreach program--begun in advance of the registration period--to provide information about the program to those who are eligible to participate. Third, interest groups oncerned with the future of undocumented/illegal migrants must be brought into the planning, outreach and implementation stages to ensure their support for the program. Fourth, initial screening of applicants must be done in a way that eliminates risk of deportation for those who are not eligible. Fifth, enforcement efforts should continue in order to encourage applicants to come forward and discourage new undocumented/ illegal aliens from entering. Last, the program should be of defined duration, and that duration should be long enough to gain trust and attract the maximum number of participants.

Eligibility Requirements--Residency

The Select Commission recommended that eligibility for legalization be determined by two interrelated measurements of residency--date of entry (at least by January 1, 1980) and continuous residency. The Commission recommended that Congress establish a minimum period of time to determine continuous residency. The Commission also held that continuous residency does not preclude visits of short duration to an alien's country of origin.

The Select Commission staff believes that it is to the benefit of this country to require a short period of continuous residency in the legalization program. A lengthy period will preclude the participation of so many undocumented/illegal aliens that the goals of the program would be undermined. On the other hand, a short period will preclude the participation of so many undocuumented/illegal aliens that the goals of the program would be undermined. On the other hand, a short period will increase the number of undocumented/illegal aliens who are eligible to participate in the program and will ensure that the maximum number of people eligible will be able to come out of the shadows and regularize their status, thereby serving the national interest.

The staff believes that the continuous residency requirement for participation in the program should be no longer than two years. Even set at two years, according to staff estimates, no more than 60 percent of the now resident undocumented/illegal aliens would be likely to qualify. Should the residency requirement be increased to three years, an estimated maximum of 45 percent of those with undocumented status would qualify. If the date of entry were adjusted* and the residency requirement was only one year, as many as three-quarters could qualify.**

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*Lengthy deliberation by Congress or delays in implementation of the program could make the January 1, 1980 cut-off date incompatible with a short period of continuous residency. Even with the earliest possible congressional and administrative action, it is unlikely that the period of continuous residency could be less than two years.

**These estimates are based on adjustments made to data collected by David North and Marion Houstoun on the duration of stay of apprehended aliens. They determined--examining a sample of aliens who had been working in this country for at least two weeks and were generally apprehended outside of U.S.-Mexican border areas--that 65.1 percent of their sample

The staff is aware that considerations aside from maximizing participation in the program should be taken into account in establishing the period of continuous residency, but they do not preclude the establishment of a short continuous residency requirement. It has been argued by those who urge a lengthy period of residence that, without a substantial residency requirement, the program will in itself serve as an inducement for further undocumented/illegal migration, by rewarding with permanent residency those who entered after discussions about legalization were well underway. The staff believes that the linking of legalization and enforcement proposed by the

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had been in this country for one or more years, 53.4 percent had been in this country for two or more years and 36.9 percent have been here for three or more years. These overall figures, we believe, underestimate the proportion of those resident for those periods because of the focus of the study--apprehended aliens--and the proportion in their sample of undocumented/illegal aliens from Mexico. According to estimates provided to the Commission by statisticians at the Bureau of the Census, Mexicans account for about 50 percent of the total number of undocumented/illegal aliens, but in the North Houstoun study, they account for slightly over 60 percent of the sample. Among Mexican respondents, 45.5 percent had been in the United States for more than two years, while 77.4 percent of those from the Eastern Hemisphere and 61.6 percent of those from the Western Hemisphere, excluding Mexico, were in that group. Also, studies of never-apprehended aliens suggest that they have longer durations of residence than the previously apprehended (see Van Arsdol and Maram studies in table on "Duration of Stay of Undocumented/Illegal Aliens"). Taking these factors into account, we have adjusted upward the North-Houstoun estimates.

Commission should reduce the likelihood of abuse by those who might seek illegal entry for the purpose of legalization. So too should the establishment of a firm date-of-entry requirement for eligibility. In fact, a program which legalizes a large portion of those already here would aid in enforcement efforts to curtail future flows.

Second, proponents of a long period of residency argue, that a primary qualification for legalization should be a demonstrated attachment to the United States and a building of the equities in this society that establish that attachment. Length of residence--in contrast to most other evidence of attachment--is a quantifiable measure, and should therefore be strictly regulated. The staff agrees that equity is an important determination, and, therefore, proposes an alternative two-tiered system of benefits that combine the interest in equity with that of maximum participation. Under this system, those who can demonstrate continuous residence of two years or more--and fulfill the date-of-entry and other requirements--would be eligible for immediate adjustment of their status to permanent resident alien. Those who meet the date-of-entry requirement but have not fulfilled the continuous residency requirement--and have therefore not demonstrated equity based on duration of residence--would be granted conditional entrant status entitling them to work legally in the United States. Upon the accumulation of four years of continuous residence in the United States, they would be eligible for adjustment to permanent resident alien status. This option would have the further advantage of spreading out the workload created as a result of an effective legalization program.

Grounds for Exclusion

The Select Commission recommended that the grounds for exclusion applied to undocumented/illegal aliens who are gaining permanent resident status through legalization be appropriate to the program. Believing that the appropriate grounds of exclusion for legalization--as with the entry of legal immigrants--are those that protect the public health, safety and welfare the staff proposes that the following general grounds of inadmissibility apply:

- likelihood of becoming a public charge;
- entering with intent to engage in activities prejudicial to the public interest or to endanger the welfare, safety or security of the United States;
- entering to engage in an activity prohibited by law or subversive of the government of the United States; and
- post persecution of individuals because of their racial, ethnic, religious or political background.

Since the purpose of the legalization program is to regularize the status of those who are already contributing members of this society, the staff believes that only those grounds of exclusion that deal with activities that could be inimical to the health, safety and welfare of the United States should be considered weighty enough to deny legalization. The public charge exclusion is maintained in order to ensure that U.S. residents do not bear any financial burden and to emphasize that those who are legalized are expected to continue to be contributing members of this society.*

Institution of the Program

The Select Commission recommended that legalization begin when appropriate enforcement mechanisms have been instituted and that enforcement efforts be maintained throughout the program.** Not all Commmissioners made explicit their understanding of the term "instituted." While one Commissioner explained in his supplementary statement that he believes that legalization should be delayed until enforcement mechanisms have been demonstrated to be effective, others stated that they would oppose such a delay. The nonbinding straw ballots on this issue reveal considerable sentiment for the latter position among those Commissioners who did not discuss their views in supplementary statements.

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*All of the grounds for exclusion described in Chapter XIII would apply with the exception of those involving entry violations.

**Persons found as a result of Immigration Service operations would be given the opportunity to apply for the program if they appeared to be qualified.

The staff proposes that in order to ensure that there is not too great a delay before the start of the program, consideration should be given to simultaneous implementation with enhanced enforcement. Not only would it speed the beginnings of legalization, but early implementation would also ensure that the information that can be collected from legalized aliens can be used by enforcement officials in targeting enforcement much more effectively than has been possible to date.

The Duration of the Program

The legalization program should be of limited duration. The staff believes that one year--with additional periods for the start-up and phase-down of the program--would be appropriate. It is a long enough period:

- to ensure adequate time to engage in outreach activities;
- to persuade undocumented/illegal aliens that the legalization offer is sincere; and
- to assure them that there is sufficient time to check on eligibility prior to actual contact with INS.

It is a short enough period so that:

- the one-time nature of the legalization program is clear;
- persons will not be misled into delaying; and
- the expense of these special program operations will not be too great.

Implementation of the Program

The Select Commission recommended that voluntary agencies and community organizations be given a significant role in the legalization process. Although INS will be responsible for making final determinations, private groups should be asked to participate in outreach efforts and the initial screening of applicants.

Outreach

As was evident in the description above of amnesty programs that have not attracted a large number of applicants, public outreach efforts may be the most important ingredient for success. Following a meeting organized by the American Friends Service Committee to bring together members of the Commission and its staff and undocumented/illegal aliens, some of the participants of that meeting prepared recommendations regarding outreach efforts. In a letter to the Select Commission, they suggested:

- The centers that are presently cooperating in the Immigration and Naturalization Service's Outreach Program would be the logical starting places. This program could be expanded with funding provided to assist the centers.
- Private or church-sponsored social centers could be used. Centers under the auspices of agencies such as: Episcopal Community Services, Lutheran Social Services or Catholic Social Services, etc. could be used. Their staff could be trained through the existing immigration centers such as those in the network of United States Catholic Conference Migration and Refugee Services or ecumenical centers such as: Centro de Asuntos Migratorios, Centro de Aztlan (Texas), Manzo (Arizona).
- Other agencies who receive government money such as Chicano Federation should be able to provide at least information and referral to other agencies.
- Medical facilities could disseminate information.
- Churches could have special meetings after services.
- Media--all Spanish-speaking stations, etc.
- Schools could hold information workshops.

In addition to these agents and places, the staff recommends that outreach efforts be conducted in places of employment. Because resources are limited, consideration should be given to targeting funds to those areas known to house and/or employ large numbers of undocumented/illegal aliens.

Since undocumented/illegal aliens are known to be apprehensive about contacts with government agencies, an information campaign conducted through respected and trusted community-based groups would appear to be essential. It is particularly important that this campaign provide accurate information about eligibility requirements, the outcome of the program for those who meet the eligibility standards and the fail-safe mechanisms for establishing eligibility. Undocumented/illegal aliens should also be informed of the new enforcement efforts that will affect their future if they do not legalize or return to their homelands.

Screening of Applicants

The initial screening of legalization applicants should be done by voluntary agencies and community organizations working under contract to the government. Giving these associations the primary responsibility for the screening of applicants would increase confidence in the program, reduce the costs of the legalization program and ensure the prompt processing of all applications.

The model for this part of this program would be the Indochinese Refugee Adjustment program. The processing guide issued by the Immigration and Naturalization Service for this program explains the responsibilities of the voluntary agencies. Since their participation in the legalization program would be very similar, these responsibilities are repeated in full:

- Liaison between the Service and other interested agencies developing internal working arrangements and training programs for and with these other agencies;
- Publicity through agency newsletters and other media, stressing the fact that the Indochinese refugees [undocumented/illegal aliens] may adjust to permanent residence, and the list of agencies where [they] may seek assistance;
- An up-to-date list of agencies who are assisting in the program;
- Assistance to the applicant in filling out forms and distribution of all necessary forms and applications;
- Basic clerical processing of applications up to and through the interview procedure; and
- Arrangement of facilities to conduct interviews by Service personnel.

The responsibilities of the INS in providing information and materials to the voluntary agencies are also described. The applicable ones are as follows:

- Information and direction to the principal agencies;
- Information and direction to all other interested persons;
- Officers to instruct at various times and locations within Service capabilities;
- An adequate supply of all forms and applications as needed; and
- Officers to conduct interviews at the requested locations outside regular work hours.

In the legalization program, the voluntary agencies would have one more responsibility--and this one would be the most important. After screening documents demonstrating residency and questioning applicants about their admissibility, the voluntary agency representatives would give applicants an evaluation of their qualification for legalization. All applicants would then have the choice, based on this evaluation, of requesting an interview with INS, making no further attempt to register if their eligibility was marginal, of having their case reviewed further by a fully-experienced immigration lawyer. In the last instance, such persons either on a paid or a *pro bono* basis would provide expert counsel. If an alien pursued legalization after knowing that their eligibility had some problems, they would do so knowing they faced the possibility of deportation.

Validation of Documents

Applicants for legalization would be requested to bring the following documents with them:

- Documents to prove continuous residence in the United States, the length to be determined by Congress;
- Statement from employer, if employed, that prospects for continued employment are good;
- Evidence, if not employed, that applicant is being supported and will continue to be supported while remaining in the United States;
- All papers issued to applicant by INS; and
- Record of birth for dependents born in the United States.

The staff urges that applicants for legalization not be made to bear too heavy a burden of proof in establishing eligibility. Since it is in the national interest to bring the maximum number of undocumented/illegal aliens out of their underground existence, it would behoove no one to make the validation process so rigorous that few applicants could pass it.

One or more of a wide range of existing documents could be used to demonstrate residency: bankbooks, rent or tax receipts, leases, deeds, licenses, birth or baptismal records of children born in the United States, census records, police records, contracts, postmarked mail addressed to applicant, premium installment receipt books and other receipts, school records; employment records, insurance records; church, union or lodge membership records, letter from business firms showing dates of business dealings with applicants; electric, water or telephone company bills or receipts; letters from landlords showing that applicants lived on their premises and marriage certificates and divorce decrees issued in the United States. In the absence of such documents, applicants could bring affidavits from U.S. citizens and permanent resident aliens that the applicant had been resident in the United States during the required period.

At the initial interview, the voluntary agency representatives would screen documents for completeness and applicability. They would also question applicants to make sure that they would not be excludable on the grounds listed above. Interviewers would not be expected to check on the legitimacy of documents and statements provided by the applicants, but they would examine them to screen out obviously fraudulent ones.

Recommendation of Voluntary Agency

Upon examination of the documents and evaluation of the information provided during the interview, the voluntary agency interviewer would advise the applicant as to his/her eligibility for the legalization program. Three determinations could be made:

1) The applicant has a strong case for legalization and he/she is encouraged to submit a formal application to INS.

   In this case, the voluntary agency representative would arrange a medical examination, fingerprint the applicant so that local police and other law enforcement agencies could be checked to ensure that applicant would not be excludable as a threat to public safety and advise the applicant about the questions likely to be asked by INS. The agency would then schedule an appointment for the INS interview.

2) The applicant has a very weak or no case for legalization.

   In this case, the applicant is advised that if he/she submits a formal application, it is likely to be turned down and he/she will either be deported, required to depart or removed under safeguards.

3) The voluntary agency is unable to determine if the applicant is qualified.

   In this case they would advise individuals that they did not qualify and could submit marginal applications (without names and addresses) for INS review. If INS indicated that the application would be denied, applicants would have two choices: to make no further attempt to register for legalization, or to have their case reviewed further

> by a fully experienced immigration lawyer. In the latter instance, the attorney, either on a paid or a pro bono basis, would provide expert counsel as to any further way to establish eligibility for legalization or another form of discretionary relief. If an alien pursued legalization after knowing that his/her demonstration of eligibility was considered inadequate, he/she would face the possibility of deportation.

After hearing the advice of the voluntary agency,* the applicant must then determine whether to press the application with INS.

Adjudication by INS

Interviews would be held by INS adjudicators in locations provided by the voluntary agencies or at INS offices. Representatives of the voluntary agencies could be present during the initial screening to act as interpreters--when necessary --and to explain the recommendation made. In the majority of cases, the staff believes, the assessment of the voluntary agency regarding residency eligibility would be confirmed be the INS interviewer. There should be little need for revalidating the documents used to demonstrate residency. The INS interviewer will be more concerned with ensuring that the applicant is not inadmissible on exclusionary grounds. On the basis of the interview and a review of all appropriate documents and forms, the INS adjudicator would make a final determination, as follows:

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*Even in cases where no voluntary agency was available to assist individuals, a mechanism similar to that utilized by the Canadian government could be set up. Individuals who came directly to an INS office could have their applications returned, with no record made, if the application was likely to be denied.

The only exception to the fail-safe system might be those instances where serious criminal (public safety) offenses were revealed during the review of an application. Likewise, persons appealing initial INS review of their cases would run the risk of deportation.

- the applicant is eligible for immediate adjustment of status to permanent resident alien; or
- the applicant is eligible for conditional entry with adjustment of status after four years; or
- the applicant is not eligible for either type of legalization and would be required to leave the United States.

If the applicant wishes to appeal the decision of the adjudicator, a one-time-only appeal would be available.

Collection of Information from Newly Legalized Aliens

One of the reasons given by the Select Commission in support of legalization was the information that such a program would provide about the sources and characteristics of illegal migration. It is very important if the full value of legalization is to be realized, that a program of information-gathering occur simultaneously with legalization itself. The staff recommends that--at the same time it contracts with voluntary agencies to process applications--INS contract for the distribution and collection of questionnaires to be given to newly legalized aliens. Voluntary agencies could administer the questionnaires at the time of the final determination by INS.

The questionnaires would ask the legalized alien to provide information about such things as: specific origins, date of entry, number of times entered, where entered, how entered, how many times returned to country of origin, employment record in the United States and in the country of origin, health conditions and emergencies, use of services while in the United States, tax payments and family relations.*

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*See Chapter VIII for proposals regarding admission of families of legalized aliens. The official application for legalization would collect information about immediate family outside of the United States. This information will be very important in planning for future admissions.

The staff does not believe that administration of such a questionnaire would appreciably reduce applications for legalization. At a meeting--inititiated by the American Friends Service Committee--between undocumented/illegal aliens and Commissioner Rose Matsui Ochi and staff members, Executive Director Lawrence H. Fuchs described the procedure outlined above and asked the participating undocumented/ illegal aliens if it would impede their registration for the program. It was the consensus of those who responded that they would be willing to answer such questions as long as they did not run the risk of deportation. Since the recommended procedures would protect them from that fate, compliance with the information part of the process should be no problem.

Monitoring and Ongoing Evaluation of the Program

In order to make sure that the legalization program is succeeding in its outreach and screening phases, there should be ongoing monitoring and evaluation of the procedures used by INS and the voluntary agencies. If it should become apparent through this monitoring, that some of the procedures are inadequate, charges can then be made in the program.

Costs and Fees of Program

The cost of processing legalization applicants under the voluntary agency plan described above is estimated to be from $15,100,000 for 1.0 million applicants to $52,850,000 for 3.5 million applicants. At least $1 million should be appropriated for the public information campaign that should precede and accompany the legalization program. If INS were given total responsibility for processing applicants, the cost would an estimated $36 million for 1.0 million applicants to $126 million for 3.5 million applicants.*

A fee of $25.00 would be charged all principal applicants applying for adjustment under the legalization program. Voluntary agencies would be paid a fixed fee for each applicant processed through the INS interview and might be given a basic grant for startup and outreach expenses. The application fee should cover the expenses to INS for all program activities, including the grants/fees to voluntary agencies.

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*Based on adjustments to the INS figures for Section 249 Adjustment under the 1977 Carter Proposals.

Potential Impact of Legalization on U.S. Communities

At the consultation held by the Select Commission on what to do about undocumented/illegal aliens already in this country, participants discussed the potential impact of legalization. Of particular concern was its impact on the labor market and community services. The displacement impact of legalization on U.S. workers was expected to be minimal since these undocumented/illegal aliens eligible for the program are, for the most part, already in the work force.

Participants indicated that some community programs would be more affected by legalization than others. Participants believed that the impact on education policy would be minimal since, in most states, the right of the children of undocumented/illegal aliens to participate in public education programs is largely accepted.* Of course, there might be significant numbers of children not currently enrolled who would enter school, although this is unlikely to have a great effect until after the families of legalized aliens enter the country. The information-gathering efforts of the program should provide data for local school systems so that they can plan for this possibility.

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*A number of Texas schools and the Texas Education Agency are currently appealing the decisions in two court cases which have resulted in the school enrollment of the children of undocumented/illegal aliens without the payment of tuition.

Health facilities, it was believed, would be a prime beneficiary of the program. Various hospitals and city/county authorities argue that they suffer financial losses because of the presence of undocumented/illegal migrants.* These officials see legalization as beneficial since more aliens would be eligible for third-party reimbursement, through private insurance or public funds.

It is the opinion of the Commission staff that payment for health care will more likely come from insurance and private payments than public funds. Despite the testimony of health-facility officials about the financial burdens of indigent undocumented/illegal aliens, there is little reason to believe that any substantial proportion of legalized aliens would be receiving medicaid assistance. First of all, the public charge exclusion should screen out those who would require such assistance. Second, the undocumented/illegal aliens tend to be hard-working, productive members of society and there is no evidence that that pattern would be disrupted by legalization.

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*See Chapter IX.

In analyzing the impact of legalization on community services, one must also take into account the benefits that could accrue in terms of improvements to the public health, education and welfare of the country. Many public health officials testified at Commission hearings that undocumented/illegal aliens, because of their underground status, can pose a public health threat by bringing in communicable diseases.* Education officials made clear their frustration at finding that children are being deprived of an education and that U.S. society is being deprived of what could be valuable intellectual resources. With legalization, there will be no reason for undocumented/illegal aliens to hide. Such an effect will certainly be in the national interest.

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*See Chapter IX.

CHAPTER XII: TEMPORARY WORKERS--RULE OF LAW AND THE OPEN SOCIETY AT RISK*

Introduction

One of the most controversial issues discussed at the hearings and consultations held by the Select Commission was the desirability of a large-scale temporary worker program. Supporters of such programs testified that the employment of foreign workers was the only alternative to labor shortages in certain sectors of the economy.

> The reason I am testifying here is not to offer the H-2 program as a solution to all the problems, but to indicate that there are peculiar areas where this is absolutely essential if we are going to have a crop.
>
> Four years ago we tried to develop a local domestic source. I expect we spent about a quarter million dollars in terms of funds from the Department of Labor, State Employment Security, growers' programs. I even climbed trees in front of the courthouse on ladders--the judges still kid me about it--trying to get domestic workers within the State of Vermont. Forty-seven thousand postcards were sent out to unemployed Vermonters. Out of this we had, I think, 750 apply that were interested; 562 were actually interviewed; 350, or whatever the number was, were hired.[1]
>
> And further,
>
> We feel that there is a U.S. worker shortfall in this country and that it will grow with succeeding years,

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*Written by Commission staff.

> primarily for several reasons. One of which is that there are certain jobs that U.S. workers will not do. One of those is cutting sugar cane in Florida. The Florida Fruit and Vegetable Association and the Florida Sugar Producers have spent tens of thousands of dollars a year doing exactly what the U.S. Employment Service asks them to do in the way of recruiting workers from as far away as New Mexico--any part of this country, offering to pay transportation, sending them transportation, having workers fail to show and then having not a single worker survive the training period or the break-in period for cutting cane. That is why you find the H-2 worker in Florida.[2]

Opponents, however, argued that native sources of labor do exist, but employers prefer foreign workers because they are more docile and will accept lower wages.

> The enthusiasm which the--particularly the agricultural employers--have for the alien workers is something that they muffle when they approach the government with their statements about a "shortage" of U.S. workers and a "threat" of crop losses. They don't mention how docile and how hard-working these people are because they don't want to stress this peculiar labor-management relation which exists with the H-2 program.[3]

They further criticized temporary worker programs as institutionalizing a second-class status that is inimical to the true interests of the nation. Stuart Mitchell of Rural New York Farmworkers Opportunities, Inc. contended that the "utilization of foreign workers to harvest apples adversely affects the domestic farm worker in many serious and fundamental ways."[4] He further stated:

> As one reads the history of the legislative intent it is clear that temporary foreign workers were not to be used as a general substitute for domestic labor, but only as a short-run supplement to domestic labor during periods of unusual domestic labor shortages. Unfortunately, the H-2 program has become a regular and consistent source of labor for a small percentage of growers harvesting apples on the East Coast.
>
> What should be understood as a source of last resort has become a preferential source of labor and has excluded domestic workers from this source of employment.[5]

Oscar Sanchez of the Labor Council for Latin American Advancement also argued against temporary worker programs:

> We take note that in some circles, there is a belief that a temporary guestworker program tailored after the European experience is the answer to the many problems of the undocumented workers in this country.
>
> [My organization] opposes any such scheme or other bracero program, however disguised. At a time when unemployment is a real American tragedy, any mass importation of foreign workers would not only compound the unemployment problems, but would be adverse to the interests of the native workers and would further help to undercut the wages, labor, health, safety standards of the American worker.[6]

Reverend Sal Alvarez of the United Farmworkers of America echoed this objection:

> I wish to express our total opposition to the H-2 Program. . . . It is our view that the H-2 Program is merely an extension of the old Bracero Program that our union and many other unions and churches across America so strongly opposed and worked toward its eventual termination. It was certainly part of the civil rights movement of the early 1960s to end that Bracero Program.[7]

The benefits and disadvantages of temporary worker programs were also weighed in light of the legalization and enforcement programs being considered by the Commission. As a mechanism to direct the flow of undocumented/illegal aliens into legal channels of migration, these programs had their advocates. Witnesses who argued in support of a temporary worker program reasoned that it would act as a safety valve, helping avoid abrupt negative consequences for U.S. and Mexican border regions which have grown dependent on traditional patterns of labor migration. Proponents of this argument have stated that a large-scale program would cushion the impact of enforcement on major sending countries whose nationals would no longer have access to the U.S. labor market through illegal channels and on U.S. employers whose businesses had relied on undocumented/illegal aliens. Perry Ellsworth, Executive Vice President of the National Council of Agricultural Employers testified that:

> We're very concerned, my national association members are, regarding the fact that there is a likelihood, as the years go by that there may be legislation which would prohibit the employment of undocumented workers. And if such legislation is passed, then we feel with great alarm the problem of where we will get enough U.S. workers to do the jobs that have to be done.[8]

Other witnesses suggested, however, that even the largest-scale program would still fail to satisfy the pressures for migration in major sending countries and that guest workers would overstay their visas and precipitate further illegal movement into the United States. They noted that the bracero program of an earlier period precipitated a great deal of undocumented movement. Stating that the same thing could happen again, these opponents argued that temporary worker programs could jeopordize the very rule of law they were designed to foster.

In an effort to properly analyze these opposing concerns and accurately measure the benefits and costs of temporary worker programs, the staff turned to an examination of past experiences with such programs. Before drafting a series of policy options staff members reviewed not only the U.S. experience with large-scale temporary worker program, but the recent history of European guestworker programs as well. The staff's findings in both of these areas follow.

The U.S. Experience

The first temporary worker program was instituted to fill labor shortages during World War I. In 1917, the combination of wartime shortages of domestic workers and the restriction of immigration resulting from the Immigration Act of 1917, led to urgent requests for supplemental labor. The program which ran from 1917 to 1921 involved an estimated 80,000 Mexican workers and a small number of Bahamians and Canadians. Workers were admitted under the authority of the ninth proviso to Section 3 of the Immigration Act of 1917 which read as follows:

> Provided further, that the Commissioner General of Immigration with the approval of the Secretary of Labor shall issue rules and prescribed conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission.[9]

Secretary of Labor W.B. Wilson emphasized that such a program should be limited to "extraordinary situations":

> While, obviously, this special exception to general provisions of law should be construed strictly and should not be resorted to except with the object of meeting extraordinary situations or conditions, it can be and should be availed of whenever an emergent condition arises. With agriculture pursuits such a condition now exists in certain sections of the country and is likely to arise in other sections during the continuance of the war.[10]

Designed with contract labor in mind, the program included a labor certification procedure to protect domestic labor. Admission was for a period of six months, with the possibility of an additional six months extension. Workers could change employers in the authorized field of employment, as long as the employers were authorized to hire them and the Immigration Service was notified. However, because of lack of adequate enforcement, many workers deserted their contracts and presumably found higher-paying jobs in other sectors of the economy. According to the Bureau of Immigration's Annual Report of 1921, a total of 72,862 temporary workers had been admitted from 1917 to 1921, of which 21,400 "deserted their employment and disappeared."

In his 1960 discussion of the World War I program, historian Otey Scruggs summarized its shortcomings as follows:

> The basic weakness of the program was lack of adequate enforcement machinery. Too much reliance was placed on the good faith of the parties involved. In the case of the farmers, most of whom were haunted by the fear of labor shortage, and who had come to regard the use of Mexican labor as a natural right, an appeal to good faith plainly was chimerical. It was equally absurd to have expected workers who came with the thought of leaving the farm for the factory (and there being no penalties for doing so, except deportation), to have scrupulously honored the terms of their contract with the growers. Since good faith alone was insufficient, a more compelling agency was needed to enforce the meager sanctions contained in the Secretary's orders. Those orders had directed the Bureau of Immigration, with the assistance of the Employment Service, to make periodic investigations. But this proved to be impractical, for the Bureau simply did not have a border force large enough to take on the added responsibility.[11]

A dramatic increase in Mexican migration followed the institution of the 1917 program. By the 1920s, Mexican immigration, legal and illegal, had reached an unprecedented level, increasing from 221,915 in 1910 to 484,418 in 1920 and 890,746 in 1926. But during the Depression of the 1930s, these extra workers were viewed as a liability. Consequently, Mexican migration dropped sharply and mass repatriation ensued. Many of those who returned were legally entitled to remain and the influx of returning workers was both humiliating and expensive for the Mexican government.

Beginning in 1942, however, the United States introduced the Mexican bracero program--the largest and longest temporary foreign worker program ever officially accepted by this country. Employing between 4 and 5 million Mexican agricultural workers over a period of 22 years, the bracero program rose out of the World War II labor shortage. This time, however, unlike 1917, there was substantial opposition from organized labor and Mexican Americans to the use of Mexican workers.

Organized labor insisted that effective safeguards be instituted to protect domestic and foreign workers against exploitation, along with a mechanism to insure prompt return of foreign workers to their homeland at the end of the work cycle. Mexican-American groups opposed the bracero program because of their belief that importation of large numbers of Mexican workers would displace already underemployed Mexican Americans and depress wages and working conditions. In order to preclude a repetition of the mass repatriation programs which had followed World War I and the Depression, the Mexican government insisted that any new temporary worker program be instituted on an intergovernmental basis and according to Mexican law.

Despite these strict guarantees, however, worker rights and privileges under the bracero program were not generally upheld and abuses were common. Such rights were not commonly granted to domestic farmworkers and there were no enforcement mechanisms. Further, illegal entry continued unabated as U.S. employers continued to hire undocumented/illegal workers to protest the terms of the bracero program. During the 22 year history of the program, 4.5 million workers came in as braceros, but 5 million were apprehended as illegal migrants. Joyce Vialet sums up the impact of the bracero program as follows:

> In short, the bracero program by itself did not prove to be a solution to the problem of large-scale illegal entry from Mexico. On the contrary, as it was administered during the early stages, the existence of the bracero program appeared to make the problem worse.[13]

The bracero program was finally terminated in 1964 as the result of mounting concern about its adverse impact on domestic farm labor.*

The European Experience[14]

Although intra-European temporary labor migrations were clearly established by the end of the nineteenth century, after World War II formal, large-scale programs became common, a situation parallel in many ways to the U.S. bracero program. Since the end of the war, two patterns have characterized European labor migrations: bilateral arrangements--often called guestworker programs--between sending and receiving countries and the free movement of labor among countries of the European Economic Community.

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*For more detailed history of undocumented/illegal migration during the period of the bracero program, see Chapter IX.

The postwar guestworker policies of such countries as Germany, Switzerland and France--the three major importers of guestworkers--were, in part, influenced by "a generalized fear of return to the massive unemployment of the Great Depression."[15]

These nations therefore sought alien laborers as temporary additions to native labor forces, until such time as the next economic recession sent them home. The unprecedented economic growth following the Second World War created a continuing demand for foreign labor that, in effect, made these guestworkers a more or less permanent fixture of the European economy, not the temporary phenomenon they were initially considered.

In Switzerland, whose economy had emerged intact from World War II, the postwar demand for industrial goods led to a long period of economic expansion and acute manpower shortages which were filled by foreign laborers. In Germany, where severe shortages in manual labor and other sectors of the German economy convinced even organized labor of the need for foreign workers, the first labor migration agreement was signed with Italy in 1955. This agreement permitted the entry of several thousand Italian farmworkers on temporary work permits the following year. The real growth in German guestworker numbers, however, took place after 1960 when additional recruitment agreements were signed with Greece, Spain, Turkey, Morocco, Portugal and Tunisia.

Unlike Switzerland and Germany, the guestworker population in France grew in the absence of a national temporary worker policy. The period between 1956 and 1965 was one in which the opportunities in France's labor market and the relatively open immigration system attracted migrants in the absence of any official program. Such was the demand, however, that the mid-1960s saw the initiation of a labor recruitment policy and agreements for the importation of unskilled workers from Morocco, Tunisia and Portugal in 1963, and from Yugoslavia and Turkey in 1965.

The policy of large-scale labor recruitment by these industrially advanced countries concern over the foreign workers, their increasing numbers and effect on the host country. By 1970--when the labor-importing countries of northern Europe were admitting an annual 500,000 workers from southern Europe, Iberia and north Africa--these countries had already begun to take steps to halt the flow of "temporary" workers. Switzerland, in 1963, had tried to freeze the manpower levels of individual firms but by 1970 nearly 35 percent of its workforce was foreign. In Germany, where between 1968 and the autumn of 1973 the total foreign labor force numbered over two and one half million or nearly 12 percent of the labor force, the government had also recognized the permanent nature of its own temporary workforce and had taken steps to promote the social integration of these workers. As for France, the early 1970s saw the promotion of a policy that sought the return of migrants to their homelands.

It was the deepening economic crisis of 1973-74 that finally brought national, concerted efforts to halt the entry of additional foreign laborers. On November 23, 1973 Germany placed a ban on further recruitment of guestworkers. France, whose guestworker population had peaked at 1.9 million, did the same on July 5, 1974, forbidding the introduction of any foreign workers from outside the European community.* And

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*In 1977, France instituted a cash-incentive repatriation plan which paid a departure grant of 20,000 francs ($4,500) plus airfare for a family of four to those temporary workers who agreed to return home. The departures which resulted during 1977 totaled 13,214, half of those who departed were unemployed.

Switzerland, not going quite as far, instituted stringent restrictions on the annual number of work permits granted each canton.

These similar national responses to existing guestworker populations were the result of western Europe's realization that the temporary guestworker program of the 1960s had become an established part of the European economy of the 1970s. Rather than simply meeting the narrowly conceived manpower needs of the postwar era, guestworker programs had also generated a continued flow of foreign labor and an unexpected national dependence upon that labor. Further, the immediate benefits which had resulted from the introduction of guestworkers to labor-starved economies were now seen in terms of the socio-economic costs that had become apparent over time:

- the need for costly social and educational services;
- problems in integration and minority issues requiring government intervention;
- demand for representation and political participation; and
- desertion of what were considered guestworker occupations by native workers, which increased rather than decreased the need for foreign workers.

Despite the freezing of guestworker recruitment, however, foreign laborers appear likely to be a long-term component of western European economies. Within the European Economic Community (EEC) labor migration across borders is unrestricted. Since it is likely that Turkey, Greece and Spain will become members of the European Economic Community, the work forces of these new members will be able to circulate freely, thus providing new sources of temporary workers not covered by the existing bans.

Guestworker employment is now also part of the structure of Western Europe's economy and it is unlikely that unemployed native workers can be substituted for foreign guestworkers. Efforts on the part of both France and Germany to do this have met with failure. The nature of the work done by foreign laborers and the relatively low wages paid for this work almost insure continued dependence on guestworkers. Another reason to suppose that foreign labor will remain a factor in European labor markets is the long-term residence of many guestworkers in their adopted countries.

Some guestworkers have been in residence so long that they have been guaranteed residency rights; others cannot be sent home against their will because of EEC and bilateral treaty provisions. In Germany, it is estimated that 1.2 million guestworkers have permanent resident status or could obtain it, either as EEC nationals or because of their long-term residency. In Switzerland, by 1976, 654,603 foreigners had established their status, meaning they had worked for over ten years. As for France, which has uncertain statistics, most experts believe that here too the average length of stay is considerable.[16]

Further, even though there has been a significant downward trend in foreign worker employment since 1973, massive family reunification programs have continued to supplement the foreign populations of western Europe. For example, although Germany and France have reduced their foreign work forces by over one million since 1974 their resident foreign populations have remained almost steady as a result of family reunification. Such reunification is likely to continue for some time and will provide a steady supply of new workers as the children of guestworkers enter the job market. In these European countries--unlike the United States--the children of guestworkers who are born in the receiving country are usually not eligible for citizenship. Thus, this second generation continues the guestworker status rather than becoming fully integrated into the host society.

What was conceived as a means of addressing temporary labor shortages has resulted in a permanent, stable--though, in some respects, second-class--population. The presence of this population which has generally benefitted Western Europe's economy has been accompanied by major socioeconomic costs and has given rise to severe social and political tensions in many European countries. The European experience points out that such short-term benefits must be weighed against long-term impacts. In the words of the Interagency Task Force on Immigration Policy, "The major Western European mistake to be avoided by the United States is the formulation of a guestworker program without bearing constantly in mind the political, social and cultural identities of guestworkers."[17]

TEMPORARY WORKER OPTIONS

In response to the testimony provided at the Commission's public hearings and a variety of research and legislative proposals, the staff designed seven approaches to the issue of temporary workers for consideration by members of the Select Commission. These can be grouped into three major categories: reformation of the current H-2 program; elimination of the current H-2 process or introduction of a greatly expanded temporary worker program, such as a long-term or interim five-year program.[18] These options reflected the needs and concerns articulated by those familiar with temporary worker programs.

Option I. Retention and Reform of the H-2 Programs

Although the United States has not had a large-scale temporary worker program since the termination of the bracero program on December 31, 1964, a relatively small number of temporary workers are admitted as H-2 nonimmigrants under the Immigration and Nationality Act of 1952, as amended.

The H-2 Program

Largely administered by the Department of Labor, the H-2 program permits employers to petition for the entry of foreign workers to perform temporary services or labor when U.S. workers capable of performing such services or labor cannot be found. These H-2 entrants, who may be any nationality, are authorized to work for specified periods of time ranging from one to eleven months on visas that can be renewed for up to three years for specific employers.

H-2 workers are admitted to the United States in many occupations, both agricultural and nonagricultural, although the entry of agricultural workers is generally more controversial. Although there are some professional and service workers among nonagricultural H-2's, many are musicians, dancers, and athletes who perform in the United States. Between 1973 and 1978, H-2 admissions have averaged a little more than 30,000 workers annually, about 17,000 of whom have been agricultural workers.* Today, British West Indians account for 95 percent of these agricultural workers** who are imported primarily to help harvest apple crops in the eastern United States and sugar cane in Florida.

Under the current regulations which govern temporary worker programs, employers must apply for temporary H-2 workers through their local Employment Service office at least 80 days before their estimated labor needs. The Department of Labor (DOL) then determines through a Regional Administrator whether qualified U.S. workers are available and whether the employment of H-2 workers for the job requested will adversely affect the wages and working conditions of U.S. workers. In making its determinations, DOL sets "Adverse Effect Wage

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*The number of H-2 workers dropped to below 30,000 in 1977 (just under) and 1978 (23,000), the most recent year for which data is available.

**Only a small number of H-2 visas are now issued to Mexican workers (for example, 977 in 1977).

Rates" (AEWR)--the minimum wage a potential H-2 employer may offer--and working conditions that must be provided to all workers by employers. The Regional Administrator makes a determination within 60 days as to whether the employer will receive certification for all H-2 workers requested, some fraction of those requested or none.

Although the H-2 program was designed to balance the needs of employers--by helping to minimize economic losses which may arise from unusual or unpredictable labor shortages--and those of labor--by certifying the unavailability of U.S. workers, it has been criticized by both groups. Difficult to administer, the individual certification process has been found to be subject to time delays and creates a paperwork burden for both the employer and the Department of Labor.

Many employers complain that the labor certification process is not only cumbersome, but at times highly adversarial. Agricultural employers have been unable to attract sufficient qualified U.S. workers and often do not know if they will be able to get H-2 workers until it is almost too late--if not too late--for some crops. Mark Miller and David Yeres, in their analysis of temporary worker programs, suggest that some of the problems of the H-2 program are caused "by the curse of labour certification in general. There simply is no thoroughly objective way to do this. What constitutes exhaustion of possible avenues of indigenous worker recruitment, for example, is open to manifold interpretations."[19]

They explain, though, that some of the difficulties result from provisions specific to this program:

> Above and beyond the question of determining when labour shortages occur, is the problem of what happens after a request for temporary workers is denied. As follows from the derivation of the H-2 program from the power of the Attorney General, Labor Department denial of certification is not conclusive. Employers, as is their right, frequently try to have Department of Labor refusals of certification overruled or rescinded. . . . Normally, the Attorney General's office concurs with Labor Department recommendations that certification not be granted. However, when the Attorney General is persuaded to overrule the Labor Department, administrative confusion can ensue.[20]

The H-2 program, its critics argue, also needs reform because its cumbersome labor certification provisions do not sufficiently protect U.S. labor. They argue that the program provides employers with a "wage wedge" when hiring foreign workers, since H-2 workers cost their employers less than U.S. workers. For each native, the employer must make social security, unemployment compensation insurance and disability insurance contributions. H-2 workers do not participate in the social security program and they have their own disability program. Although most H-2 agricultural workers are not covered by unemployment compensation provisions, major agricultural states such as California, New Jersey, New York, Texas and Washington do not exclude H-2 workers from unemployment compensation.[21] The "payroll tax wedge" between U.S. workers and H-2 workers--which ranges from 12 to 30 percent for wages--thus causes many employers to prefer alien workers.

The "wedge" between H-2 and U.S. workers, however, is more than economic. Because H-2 workers are not eligible for social security and unemployment compensation programs, they have a second-class employment status in this country. Moreover, since they are able to stay in this country only as long as they are under contract to their employer, H-2 workers are--in effect--without redress if they are exploited. David North, in a study on nonimmigrant workers prepared for the Labor Department, described some of the worst parts of the H-2 system:

> There is another element to the growers' power to punish workers, which is clearly part of the employment practices of the sugar cane industry, and perhaps of the apple

> industry, as well. This is the "black list." A worker who seriously displeases his employer, to the point that he is involuntarily repatriated during the season, is placed on the black or "u-list" of unacceptables who are forever barred from H-2 agricultural employment in the U.S. The H-2 who is u-listed is for practical purposes barred from the U.S. labor market for life. No U.S. employer has that power outside the H-2 program. Some workers are repatriated for serious personal misconduct, theft, and violence, but most are sent home as the outgrowth of labor-management disagreements.[22]

Besides this potential for abuse, the H-2 program can have depressing effects on the wages of employees. the Adverse Effect Wage Rate (AEWR)--by setting the minimum wage that potential H-2 employers may offer--often means that it becomes the maximum wage paid because any native worker demanding more than the AEWR can legally be rejected.

The AEWR is criticized for other reasons as well. The process of determining this wage is complicated. In nonagricultural settings, the Department of Labor merely requires that employers try to recruit at the prevailing wage--that established, for example, by union agreement. In agriculture, though, there is no single prevailing wage so the Department of Labor constructs an updated AEWR each year. The current procedure takes the Department of Agriculture's (USDA) average state-wide hourly wage and raises it by the previous year's increase.

There are several problems with this procedure. First, the USDA quarterly wage survey produces imprecise estimates of state-level wages. Second, a lag is built into each year's increase. Third, each state's farm labor market is treated as separate from those of other states as well as nonfarm markets within the state, even though harvest work is done by workers who also have nonfarm jobs and by interstate migrant farmworkers.

Rationale

Those who advocate retention of the current H-2 program recognize its problems but believe that reform of the program would be preferable to the introduction of a greatly expanded program because it is unwise to propose a new program before it is known whether additional workers are needed. Proponents of this position believe that the current H-2 program serves the purpose for which it is intended and that specific provisions could be changed to meet the concerns of critics. They note that measures to curb illegal migration might not be fully effective for up to eight years and, therefore, some undocumented/illegal migrants would continue to work and meet the labor needs of employers. Once enforcement efforts are effective and the legalization program has been implemented, they argue, the desirability of a new expanded program could be weighed.

The staff presented two options that reflect this position:

Modify employer provisions of current H-2 Program to stipulate that employers pay FICA and unemployment insurance.

Employers of H-2 workers are not, currently required to pay social security, disability or unemployment compensation taxes for these individuals. The payroll tax wedge between native and foreign workers ranges from 12 to 30 percent for wages and sometimes results in a preference for foreign labor. This option would require employers to pay FICA and unemployment insurance for H-2 workers and thus eliminate the existing "wage wedge."

The advantages are:

° Elimination of wage wedge (not having to pay social security and unemployment insurance for H-2's) ends past advantage to employers of hiring H-2 workers over U.S. citizens or permanent residents and should help encourage employers to find U.S. workers.

- To the extent that U.S. workers cannot be found for certain jobs, the current program with improvements will allow the entry of foreign workers to fill these jobs while not encouraging employers to hire foreign over U.S. workers.
- Retention of the current program with relatively few entries does not create a large temporary worker program which could parallel a substantial undocumented/illegal worker flow until recommended enforcement measures are effective.
- Continuing the current H-2 program is prudent until we know the impacts of the legalization program and increased enforcement. At a later date information will be available to enable the United States to make a decision based on facts.
- Continues an enforceable administrable program which works relatively well and under which there is a high rate of return migration.

The disadvantages are:

- The H-2 labor certification procedures is time-consuming and cumbersome for employeers;
- The Adverse Effect Wage Rate remains difficult to determine and administer in an ever-changing economic climate.
- Once enforcement measures were effective employers who had earlier relied on undocumented/illegal workers and who could not find U.S. workers would be hard-pressed to get them under the H-2 program.

Streamline H-2 worker program

Under this option, the number of labor certifications issued under the current H-2 program could be slightly increased, but the main emphasis would be placed on streamlining the process and protecting U.S. workers. This alternative would:

a. Amend Section H(ii) of the INA, to read: "If unemployed persons able and willing to perform such service or labor at the place and time needed for this work cannot be found in this country;"

b. Require the Department of Labor to refer workers to an employer within 60 days of that employer's request for certification, or within 30 days for agricultural workers.

c. Require the Department of Labor to adopt a more effective method for setting the Adverse Effect Wage Rate;

d. Require employers to pay social security and unemployment insurance taxes for H-2 workers;

e. Make H-2 workers eligible for the same benefits as U.S. workers;

f. Require payroll deductions to be reimbursed to workers upon return to native countries;

g. Require the Department of Labor or Justice to institute grievance procedures to resolve H-2 labor-management disputes; and

h. Require, as an interim step, the government not to replace H-2 workers fired for labor market reasons (H-2 employers to be limited to a peremptory firing of no more than one percent of their work force in a given year).

The advantages are:

- Enforcement is enhanced when workers are contracted to specific employers (under the current H-2 program, workers have an excellent rate of return to home countries);
- Streamlining the labor certification process will help employers meet emergent agricultural needs;

The advantages are:

- Full protection of H-2 workers is provided under new grievance procedures;
- Elimination of wage wedge (not having to pay social security and unemployment insurance for H-2's) ends past advantage to employers of hiring H-2 workers over U.S. citizens or permanent residents; and
- Additional workers can be certified if greater need for foreign workers is demonstrated.

The disadvantages are:

- Certification requirements would still be regarded as too rigorous by most employers;
- The Adverse Effect Wage Rate remains difficult to determine and administer in an ever-changing economic climate;
- A shorter period for certification may make it difficult to recruit sufficient U.S. workers; and
- Even a streamlined system would not easily accommodate possibly large-scale need and demand following effective enforcement of U.S. immigration laws.

Option 2. Eliminate the H-2 Program

Rationale

Those who oppose any type of temporary worker program argue that given the large numbers of unemployed Americans, employers should be encouraged to rely on domestic labor markets to meet labor needs. Furthermore, they state, temporary worker programs may constitute a type of "labor subsidy" to certain groups of employers who prefer to hire docile foreign workers with fewer rights than U.S. workers. Those who are most likely to suffer competition from foreign workers are among the most disadvantaged members of the U.S. labor force--youth, minorities and women.

If employers are granted a continual supply of foreign workers, according to the proponents of eliminating the H-2 program, labor-intensive industries have little incentive to upgrade jobs or improve labor standards to compete effectively for American workers or to introduce new technology. Thus, many of those who seek to protect U.S. labor would argue that temporary worker programs are against the interests of U.S. workers and the current H-2 program should be abolished.

The advantages are:

- U.S. reliance on foreign labor is reduced;
- More jobs are available for U.S. workers; and

- Adversary relationship between the Department of Labor and employers is ended.

The disadvantages are:

- Employers will be unable to find labor for unanticipated, short-term needs;
- Costs to consumers will be higher on some agricultural products due to higher wages paid or increased technology;
- If this plan is implemented abruptly, it will be likely to have negative impacts on businesses currently employing H-2 workers; and
- Some small or marginal employers who could not find U.S. workers might go out of business.

Option 3. A Large-Scale Temporary Foreign Worker Program

Several specific proposals have been advanced to provide for an expanded temporary worker program. These model differ substantially in their characteristics, including: length of stay, eligible countries and rights of workers. The proposals can be most easily divided into two broad categories: those that would tie a worker contractually to a specific employer as in the current H-2 program and those that provide the temporary worker with "free agent" status with respect to employers.

Expanded Contractual Programs

Provisions

During the past congressional session, a number of bills were introduced to facilitate the expansion of the H-2 program. The Illegal Alien Control Act of 1979 (H.R. 5114), introduced by Rep. Clair Burgener, included provisions for "facilitating the admission of aliens for temporary employment" and various enforcement measures to deal with illegal migration, such as employer sanctions. The bill retains all current H-2 procedures concerning the certification and conditions of H-2 employment with one marked difference: the Secretary of Labor is given 60 days, or 20 days in the case of agricultural employers, in which to respond to requests. He must either refer "able and qualified" domestic workers to the employer or approve the certification of the requested H-2 workers. The Burgener bill also limitd the extensions to periods of up to one year.

Representative Charles Pashayan proposed draft legislation that is substantially similiar to the Burgener bill. The Pashayan proposal, however, differed with the Illegal Alien

Control Act on several points. Representative Pashayan extended the referral time for agricultural employers from 20 to 30 days, and included provisions which allows for H-2 extensions from one year to a maximum of two years. The Pashayan legislation also increased the rights of employers to court appeals of DOL decisions and demands prompt DOL review of supplemental requests. Most importantly, this bill allowed undocumented/illegal aliens who have resided in the United States since January 1, 1980 or before to apply for the program.

Congressmen Hamilton Fish, Jr. and Norman Shumway also introduced legislation (H.R. 326 and H.R. 7399) to facilitate the entry of nonimmigrant workers. The Fish proposal called for amendments identical to Mr. Burgener's 60- and 20-day referral requirement, a one-year maximum on H-2 extensions and a stipulation that the Secretary of Labor "promptly" respond to employer requests for the review of a referred worker. Both bills also eliminated the need for employers to conduct a national search for domestic workers by stipulating that U.S. workers must be "available at the time and place needed." Mr. Shumway's bill also included these provisions, but limited his proposal to agricultural employers.

Representative Richard C. White also introduced legislation (H.R. 800) to facilitate expansion of the program.

While his bill maintained the present certification process, it struck from the law language which allows H-2 admittance only if "unemployed persons . . . willing and capable" of performing such service cannot be found in this country. This amendment was designed to relax the certification process by forgoing a national search for domestic workers.

Rationale

Advocates of an expanded H-2 program argue that there is a demonstrated need for foreign workers, especially in seasonal agricultural labor, that is not being met by the existing H-2 program. Domestic workers, they claim, cannot be found to fill these jobs at prevailing wages and working conditions as long as more attractive alternatives exist.

Their major criticism of the current H-2 provisions is the certification process that includes time delays, burdensome paperwork and excessive red tape and which they regard as overly stringent. Employers also insist that a nationwide search for workers is impractical given regional differences in the labor force and wage rates.

The proposals for an expanded H-2 program all provide for facilitating entry through relaxed certification.

The advantages are:

- An expanded H-2 program, with less stringent certification, would more readily meet the need for labor, given current wages and working conditions. In agriculture, the rapid availability of foreign workers could avoid the loss of production at peak times. In general, an expanded H-2 program might promote lower prices to the consumer, thus combating inflation. Lower prices, especially in agriculture, would have a positive effect on the U.S. balance of payments.
- Expanded H-2 proposals, two of which include employer responsibility sanctions, may have the effect of curbing and/or shifting the current influx of undocumented/illegal workers into legal channels thereby reducing violations of American law and exploitation of undocumented workers.
- In the current H-2 program, the rate of return of workers to their country of origin is excellent. An expanded H-2 program, in contrast to some of the more open-ended, "free agent" proposals might enjoy similar success.

The disadvantages are:

- Administratively, the H-2 program may not lend itself to a great increase in numbers of visas issued. The system of individual certification is time-consuming and requires considerable paperwork.
- The ability of DOL, under an expanded H-2 program, to protect American workers from the adverse effect of foreign workers would be seriously hampered by relaxing the certification process.
- To make it easier for employers to hire foreign workers would discourage them from actively seeking unemployed domestic workers.

° Under a contractual program, there may be an increased potential for the exploitation of temporary workers. Workers in this program are tied to specific employers who may, at will, terminate their contract and their eligibility to remain in the United States.

Large-scale, Noncontractual Temporary Work Program

Provisions

A proposal for introducing a new large-scale temporary worker program was also introduced during the last Congress. The "United States-Mexico Good Neighbor Act of 1979" (S. 1427, H.R. 5128) was sponsored by Sens. Harrison Schmitt and S. I. Hayakawa and Rep. Daniel E. Lungren, and corroborated, to a certain extent, by Dr. Wayne Cornelius of the University of California at San Diego. This proposal would allow Mexican workers to spend up to six months in the United States seeking or working at a job. There would be no geographical or contractual restraints on workers and no prohibition on the type of job. Nevertheless, in order to protect domestic labor, the Secretary of Labor could restrict foreign workers from specific business sites if sufficient qualified and willing American workers were available. Visas would be issued by U.S. officials in Mexico on a first-come, first-served basis and workers would be required to leave the United States for at least six months after visa expiration. Mexicans overstaying their visas would be ineligible for another visa for five years; any worker entering illegally would be denied a temporary worker visa for ten years. Under this program, workers would be ineligible for adjustment of status to permanent resident.

The Attorney General, in consultation with the Secretaries of State, Agriculture, Commerce and Labor would establish annual and monthly quotas for temporary workers based upon the number of seasonal workers sought by U.S. employers. The bill recommends the establishment of a bilateral Advisory Commission on the Mexico-United States Temporary Worker Visa Program to consult with and advise the Attorney General in establishing the regulations and the numerical quotas.

Some proponents of a large-scale temporary worker program view this option as a preliminary step in reducing the number of undocumented/illegal aliens. They recommend instituting such a program to be used instead of a broad legalization program leading to permanent resident status, employer sanctions or increased enforcement. Dr. Wayne Cornelius, however, envisions the program as corollary to these other alternatives.

Advocates of this proposal have indicated that Mexican workers would come under the full protection of American law, and that these rights could be written into the legislation. They state that the Department of Labor participation in the placement of Mexican workers would be minimal, as they believe that labor tends to distribute itself in an open-market system. The labor marketplace itself would determine the viability of foreign workers. If domestic labor didn't take certain jobs, the Mexican workers would be free to move in. Once this occurred, American labor could not petition against certification. Those who support this option assume that most employers would prefer legal workers, especially if certification procedures were simplified. These advocates point out that the desire for foreign workers stems not from their low cost (most employers pay at least the minimum wage), but from the difficulty of attracting domestic workers. They argue that the latter have access to income-transfer programs and so leave unfilled the low-skill, low-level jobs which exist in any industrialized country.

The advantages are:

- Low-skill, low-level jobs could be filled and current production in areas utilizing these workers could continue with minimum disruption or labor cost increases.
- A certain portion of the undocumented population could come forward and be given legal temporary worker status, thereby reducing their vulnerability to exploitation.
- Such a program might gain diplomatic bargaining points with a Mexican government faced with overpopulation and unemployment/underemployment of 30 to 40 percent.

The disadvantages are:

- Although estimates of the undocumented/illegal population are necessarily rough, the study done by Census Bureau personnel for the Select Commission indicates numbers of 3.5 to 6 million currently in the United States. Of these, about half, or 1.7 to 3 million, are believed to be Mexicans.* Advocates of this proposal maintain that, to be effective, the numbers of visas issued must be large (500,000 to 1.5 million). Cornelius proposes initiating the program with 850,000 visas.

  If the primary goal of the Good Neighbor Act is to affect the status of Mexican undocumented workers, the program dimensions for issuing visas and maintaining some control over these workers become enormous. It is questionable, however, whether the present manpower level of the Immigration and Naturalization Service would be able to effectively administer or enforce such a program, especially since participants would be required to rotate every six months.
- The six-month visa term is predicated on Cornelius's research which indicates that the Mexican work force is overwhelmingly seasonal. Other researchers have

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*See Chapter IX for further discussion concerning undocumented/illegal population in the United States.

indicated that this evidence is not necessarily conclusive.* The prospect of a short-term visa might not provide an incentive for Mexicans who had obtained longer-term employment to come forward.

- Most proponents envision that this program would be limited to Mexicans. If so, it would cover only half of the current undocumented population. Until enforcement measures are fuly effective, there would be nothing to preclude unfair competition from undocumented/illegal aliens from other countries which would affect both temporary and domestic workers.

- Issuing the visas in Mexico might contribute to the formation of new migrant streams rather than focusing on those already in existence. Historically, each new recruitment of Mexican workers by the United States has raised expectations and resulted in long-term patterns of illegal entry by unsuccessful visa applicants.

- Even if foreign workers were guaranteed full rights, it is questionable whether labor complaints could be effectively processed in six months, the term of the foreign worker visa.

- Some employers argue that as soon as migrant worker status is established, temporary workers will leave agriculture for higher paying jobs, particularly if there are few occupational or geographical restrictions.

- Continued reliance on imported labor to fill jobs rejected by domestic workers, at prevailing wages, might lead to a permanent, if individually rotating, underclass of workers.

- With a six-month limit on employment, these workers would just be reaching peak efficiency in some cases when their visas would expire. Employers would than have to recruit, hire and train new workers. Over time, in jobs that primarily hired temporary workers, productivity might well lag.

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*See Chapter IX for a discussion of the nature of the undocumented/illegal workforce.

Gradual Phase-Out of Temporary Worker Status

Provisions

In a paper submitted to the Select Commission, Sidney Weintraub, Richard N. Sinkin and Stanley R. Ross of the University of Texas at Austin proposed a temporary foreign worker program of limited duration. This program, which might cover five years, would issue a declining number of temporary worker visas each year, as follows, reaching zero at the end of the period.

Year	Number of Temporary Workers
1	Up to 500,000
2	Up to 400,000
3	Up to 300,000
4	Up to 200,000
5	Up to 100,000

The authors would prefer that this program initially be limited to Mexican workers and be established through bilateral negotiations. The terms of this agreement could then become a model for negotiation with other sending countries, particularly Caribbean islands such as Jamaica and Barbados that now send the bulk of H-2 workers. Before such a program would be instituted, employer sanctions and some type of universal work eligibility identification system would be put in place. According to their proposal, the phased-out program would be accompanied by a legalization program for undocumented/illegal aliens residing in this country and an increase in the number of immigrant visas allotted to nearby countries.

The authors of the proposal suggest that decisions on particular aspects of this program, such as the number of visas issued each year, the sending countries and the speed of the phase-out, could be made after internal discussion in the United States and then be subject to bilateral negotiations. They propose that the Department of Labor, as part of its general assessment of labor needs, certify certain sectors of the economy (like agricultural sectors now using large numbers of undocumented/illegal workers, certain service sectors like hotels and restaurants and construction,) where it would be legal to employ guestworkers. Temporary workers would be free to choose employers. This process would reduce the administrative problems of the H-2 program, as would the grievance procedure they proposed. A program to protect foreign workers from exploitation would be worked out during the course of the bilateral negotiations.

Rationale

Dr. Weintraub outlined the rationale behind this proposal at a Select Commission consultation. He believes that instituting a temporary worker program, with worker protections and rights is "futile unless persons without permits are prevented from entering the United States or find it difficult to work if they do enter." In his presentation, he viewed the establishment of employer sanctions and a universal work permit or counterfeit-proof social security card as necessary trade-offs in curtailing illegal immigration which leads to "wholesale violation in U.S. laws . . . to the detriment of the most disadvantaged segments of our society, the Blacks, Chicanos, other minorities, and the unemployed."[23]

According to Weintraub, some form of legalization would be necessary because "it would not be equitable to provide work permits for aliens not in the United States while making it impossible for persons already here to change jobs." He also argues for an increase in the present immigrant visa ceilings for nearby countries, in order to give greater opportunity for legalization and lessen the demand for undocumented/illegal migration. Those not here long enough to qualify for permanent residence under a legalization program could be given preference in the issuance of temporary visas.

If U.S. employers had no option other than to use domestic labor, Weintraub argued, a process of adaptation would necessarily take place:

> Either the labor would have to be found, presumably at a higher price, or trained if the functions were upgraded, or eliminated by increasing productivity, or the business [would] flounder or be exported. I would expect all these adaptations to occur. It is doubtful that there would be a one-for-one substitution of national for foreign labor, but there might be a one-half-for-one shift, or some other partial substitution. In a country where minority youth unemployment is around 40 to 50 percent in most urban areas, it would be an attractive incentive to force employers to seek out domestic sources of labor. In rural areas, the struggle for unionization undoubtedly would look different if the growers could not rely on cheap and docile foreign labor.

In answering the argument that the United States will face a labor shortage in the 1980s, Weintraub advocated starting the adaptation process as soon as possible, rather than relying on foreign workers to fill jobs which may never be acceptable to many Americans at prevailing wages.

As for the foreign policy implications of his proposal, Dr. Weintraub asserted that the United States should concentrate on the domestic impact of reducing illegal migration and only secondarily on the impact on Mexico. Nevertheless, because of the traditional economic interdependence between Mexico and the United States and because a stable Mexico is important to this country, he advocated a transitional foreign worker program "in order to give Mexico time to wean itself from reliance on the United States when dealing with employment problems."

Weintraub stated that his main reason in opposing a permanent or open-ended temporary worker program lies in his belief that ". . . a significant proportion of temporary guestworkers tend to become permanent residents. Either an underclass of permanent temporary residents would develop or there would have to be periodic amnesties." He further objects to a continuing program on the basis of the social costs for the society as a whole and for the lowest levels of our labor market.

The Advantages are:

° As the foreign labor pool is gradually phased out, wages and working conditions might improve for a number of Americans at the lowest wage and skill levels, as employers compete for the reduced labor force. Some persons on income-transfer programs may be enticed to take upgraded jobs.

- The Weintraub model incorporates two aspects of the only approach which has successfully reduced illegal migration in our history--effective enforcement and legalization of the status of the undocumented population already here. The other important element in curtailing the presence of undocumented migrants--employer cooperation--would be obtained through employer sanctions, provided these were adequately enforced.
- The gradual reduction of temporary workers in this program would provide time for both employers and sending nations to adjust to reduced migration to the United States.
- This program could provide an appropriate status for undocumented/illegal aliens who are not qualified--because of the residency requirement--to participate in the legalization program discussed in Chapter XI.

Disadvantages are:

- The program's gradual elimination of dependence on foreign labor could be achieved only if adequate enforcement measures were taken. Otherwise, the flow of undocumented/illegal aliens would continue and increase as visa numbers were curtailed.
- Initially limiting the program to Mexico would not help the approximately 50 percent of undocumented/illegal population from other countries, if they do not qualify for legalization.
- Some employers might not be able to remain competitive without foreign labor importation. Thus, some production would be disrupted or lost, as well as some American jobs.
- A preestablished phase-out procedure could not take into account changes in the U.S. labor market--increased or decreased demand, for example--that occurred during the five-year period of the program.
- The economies of communities along the U.S.-Mexico border might be affected adversely by the withdrawal of a traditional source of labor when the program ended.

Temporary Worker Program Leading to Permanent Resident Status

Provisions

Alexander Cook, former Minority Counsel for the House Judiciary Committee and Richard Mines, an agricultural economist from the University of California at Berkeley, have both proposed models for temporary worker programs that would lead to permanent resident status after a period of four to five years. Mr. Cook favors granting immediate permanent resident status to the segment of the current undocumented/illegal population that has established certain equities in the United States, and a temporary status to the remaining segments. This temporary status would enable workers to remain and work in the United States for six months per year and would culminate in eligibility for permanent resident status after five years. Cook believes that it would be politically more palatable to gradually phase in the bulk of the undocumented/illegal alien population, rather than grant a general amnesty. He doesn't view this model as a true temporary worker program in the sense that it would fill targeted vacancies. Rather, it would be part of a two-tiered legalization program. He advocates the continuation of the H-2 program to fill residual vacancies.

Richard Mines advocates dividing the current undocumented/ illegal alien population into two groups by lottery. Both groups would alternately work two years in the United States and two in Mexico. Workers would be eligible for permanent resident status after this four-year period had elapsed. Visas would be issued in the United States in order to focus on traditional migratory networks. After the initial undocumented group had adjusted status, subsequent workers would be admitted under the same conditions.

Both the Cook and Mines proposals advocate full rights and benefits as well as freedom of movement for temporary workers; they would be predicated on the implementation of an effective interior enforcement plan. Further, Mines suggests providing an additional incentive for return after visa expiration, a forced savings plan in which $2,000 would be withheld from each worker and kept in escrow in a Mexican bank. Cook stipulates that any worker overstaying his visa would be ineligible to adjust status under this program.

The advantages are:

° From the perspective of a legalization model, the major advantage of this concept is that it distributes the impact of absorbing a large group of indeterminate size over a period of time, while still granting them protection under law. Of course, for the most part, the question of absorption is academic, since this group of persons is already employed in the United States. Nevertheless, in terms of public opinion, this distribution over time may be preferable to granting immediate immigrant status to a potentially massive group of workers.

- As a temporary worker program, if extended beyond the current group of workers, the Mines proposal would minimize the problems associated with the proposals which create a two-class system of workers. All temporary workers would eventually become eligible for permanent resident status.
- Because the proposals provide the potential for the lifelong impact of these persons on the labor market, there might be greater care taken in establishing mechanisms for protecting domestic labor.
- The incentive for foreign workers to register would be greater.
- A plan providing adjustment of status might be attractive to the governments of sending nations, because of the range of worker rights and the potential for continued labor exportation.
- If the United States seeks, as a matter of its immigration policy, to permanently admit low-skill workers with a high motivation to better themselves, this is the kind of program that would provide a channel for these people.

Disavantages of the Mines model are:

- If the numbers of workers admitted in a continuation of the initial program were large and no restrictions were placed on occupation, there would be a potential for substantial adverse impact on domestic labor.
- If this program were authorized indefinitely, there would be little incentive to upgrade jobs and the United States might face a situation where its lowest-level jobs were always filled with a constantly rotating foreign labor force.

Disadvantages of the Cook model are:

- Limiting the visa to six months might prove disruptive for workers and businesses with permanent jobs.
- Once legal status is conferred guaranteeing freedom of movement in the labor market, many temporary workers may move to higher-paying jobs, leaving low-level jobs to be filled by a potentially large number of new temporary workers.
- Requiring the second group in the two-tier legalization program to wait five years or more (from the enactment of legalization) for permanent resident status, when that status was granted the first group on the basis of less than five years in the United States, may be perceived as inequitable.

Staff Conclusions

As a result of its investigations, the Commission staff recommended to the Commission the continuation of an improved H-2 program. The staff believes that there is a need for temporary alien labor in this country and that ending the historical flow of foreign workers to the United States would disrupt regional economies. Despite their support of temporary workers, however, staff members do not recommend any substantial expansion in foreign-worker recruitment at this time.*

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*In Commission testimony and research, an expanded temporary worker program has been presented as a possible complement to legalization, providing a status for those undocumented/illegal aliens who cannot qualify for legal permanent residence. See the Chapter XI for a discussion of how an expanded temporary worker program might be used under legalization.

Staff review of past temporary worker programs in the United States and the recent guestworker experience of Western Europe has led to the conclusion that the eventual costs--social and economic--of such programs outweigh the immediate benefits. The general abuse of worker rights during the bracero program and the adverse effects on the U.S. labor market were paralleled in the later guestworker programs of Western Europe, where the additional problem of permanent guestworker populations created further socioeconomic tensions. These experiences with massive numbers of temporary workers led the Commission staff to believe that a large-scale temporary worker program, if introduced in the United States would be likely to:

- Depress wage scales and working conditions for U.S. workers in low-level occupations;
- Preserve labor-intensive production methods reliant on foreign labor and discourage the restructuring of the labor market;
- Inhibit enforcement of worker rights by supplying a constant changing source of foreign labor;
- Create a potentially massive financial and administrative burden on the agencies charged with the management and enforcement of such a program;
- Result in a de facto immigration policy, of the kind which resulted in the permanent residence of up to half of the guestworkers who came to Western Europe;
- Create a permanent, if individually rotating underclass of foreign workers who perform jobs considered unacceptable by U.S. labor; and

- Create the potential for new undocumented/illegal migrant streams.

The staff finds any of these conditions an unacceptable price to pay for the short-term economic benefits which might be provided by a large-scale infusion of alien labor. It therefore recommended against substantial expansion of the current H-2 program, believing that an improved and streamlined H-2 process should meet U.S. labor needs without running the risks--of undermining the rule of law and the open society--created by larger-scale temporary worker programs. The staff recommendation did not rule out however a slight expansion in the number of temporary workers, as labor market considerations require, if they were admitted to the United States within the existing H-2 program.

The Select Commission Recommendation

Members of the Select Commission carefully weighed these options and the arguments made on their behalf. Concluding that the employers who testified at Commission hearings represented a legitimate need for foreign workers, the Commission supported a continuation of the current H-2 program.* It did so despite the inadequacies it had found in the program because it believed that a continuation of the existing H-2 program was "preferable to the institution of a new one. . . ." and that improvements could readily be made within the present system to make it more acceptable to foreign workers and U.S. employers.

The Commission therefore chose to address the problems they had found in the existing H-2 process--the administrative delays and the unequal treatment of foreign workers. To eliminate these problems, Commission members recommended changes to "increase the fairness of the program in dealing with U.S. workers and employers." These recommendations, as stated in the Commission's final report, are:

- Improve the timeliness of decisions regarding the admission of H-2 workers by streamlining the application process.
- Remove the current economic disincentives to hire U.S. workers by requiring, for example, employers to pay FICA and unemployment insurance for H-2 workers; and maintain the labor certification by the U.S. Department of Labor.

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*The Commission voted 14 to 2 in support of an improved H-2 program. For a discussion of the Commisson's recommendation concerning temporary worker programs, see U.S. Immigration Policy and the National Interest, Recommendation VI.E.

- The Commission believes that government, employers and unions should cooperate to end the dependence of any industry on a constant supply of H-2 workers.

Designed to protect U.S. interests, these proposed changes also extend to temporary workers the employment benefits normally given U.S. laborers--employer payment of FICA and unemployment insurance. The Commission intended, by guaranteeing H-2 workers the same benefits as native laborers to allay the concerns voiced in its public hearings that a temporary worker program could degenerate, as did the bracero program, into an exploitation of foreign workers.

Although Commission members had listened closely to the arguments on behalf of expanded temporary worker programs, most Commissioners concluded that the Commission should not recommend the introduction of a large-scale temporary worker program. Some opposed the temporary worker concept under any circumstances; others believed that recommending a new temporary worker program would be inadvisable "until the precise effects of the proposed recommendatons to deal with undocumented/illegal immigration are known."[26]

Footnotes

1. Testimony of Peter Langrock, Shoreham Cooperative Apple Producers Association, Middleburg, Vermont, at Albany hearing, May 5, 1980, p. 33 of transcript.

2. Testimony of Perry Ellsworth, Executive Vice President, National Council of Agricultural Employers at the Baltimore hearing, October 29, 1979, pp. 219-220 of transcript.

3. Testimony of David S. North, Center for Labor and Migration Studies at the Baltimore hearing on October 29,1979, p. 115 of transcript.

4. Testimony of Stuart Mitchell, Rural New York Farmworker Opportunities, Inc., Rochester, New York, at Albany hearing on May 5, 1980, p. 100 of transcript.

5. Ibid. p. 101.

6. Testimony of Oscar Sanchez, Labor Council for Latin American Advancement, Washington, D.C., at the San Antonio hearing on December 17, 1979, pp. 105-106 of transcript.

7. Testimony of Reverend Sal Alvarez, Legislative Representative, United Farm Workers of America, at Phoenix hearing on February 4, 1980, p. 21 of transcript.

8. Testimony of Perry Ellsworth, Executive Vice President, National Council of Agricultural Employers at the Baltimore hearing on October 29, 1979, pp. 217-218 of transcript.

9. For a history of earlier temporary worker programs, see Congressional Research Service, "Temporary Worker Programs: Background and Issues," prepared for Senate Judiciary Committee February 1980.

10. Ibid.

11. Scruggs, p. 324.

13. "Temporary Worker Programs," p. 27.

14. This section is based on detailed descriptions of the European experience with guestworkers found in the Staff report of the Interagency Taskforce on Immigration Policy, March 1979, pp. 481-525; in Vernon M. Briggs, Jr. "Foreign Labor Programs as an Alternative to Illegal Immigration into the United States: A Dissenting View" (College Park, Maryland), April 30, 1980; in Philip L. Martin, "Guestworker

Programs, Lessons from Europe" (Washington, D.C.: The Brookings Institution) June 1979; in Larry Neal, "Interrelationships of Trade and Migration--Lessons from Europe," August 15, 1980, prepared for the Select Commission on Immigration and Refugee Policy; and Michael Piore, Birds of Passage: Migrant Labor and Industrial Societies (Cambridge, New York: Cambridge University Press) 1979. For other discussions of guestworker programs in Europe, see the bibliography.

15. Report of Interagency Taskforce, p. 484.

16. Ibid., pp. 506-513.

17. Ibid., p. 526.

18. In drafting these options, the staff reviewed the legislative proposals concerning temporary workers of Rep. Clair Burgener (H.R. 5114); Rep. Charles Pashayan (draft legislation); Sens. Harrison Schmitt and S. I. Hayakawa (S.1427) and Rep. Daniel E. Lungren (H.R. 5128); Reps. Hamilton Fish, Jr. (H.R. 326) and Norman Shumway (H.R. 7399); and Rep. Richard C. White (H.R. 800). It further considered the working papers of Edwin P. Reubens, "Immigration Problems Limited-Visa Programs and Other Options"; of David Gregory, "A Mexican Temporary Workers Program: The Search for Codetermination"; of Wayne A. Cornelius, "Legalizing the Flow of Temporary Migrant Workers from Mexico: A Proposal"; and of Richard N. Sinkin, Sidney Weintraub and Stanley Ross, "A Phased Out Guest Worker Proposal." Also reviewed, were the proposals of Alexander Cook, Minority Counsel for the House Judiciary Committee; Richard Mines of the University of California at Berkley; Vernon Briggs; and Michael Piore.

19. Mark Miller and David Yeres, "Migration for Employment Project, A Massive Temporary Worker Progrom for the United States: Solution or Mirage," November, 1979.

20. Ibid.

21. Letter to Select Commission from Perry Ellsworth, 1979.

22. David North, Nonimmigrants and Nonimmigrants, prepared for Department of Labor, 1979.

CHAPTER XIII: THE GROUNDS FOR EXCLUSION: RATIONALITY AND RIGHTS

SECTION ONE*

Introduction

There is no question in international law concerning the right of a nation to forbid entry to the citizens of another country when it considers the individuals undesirable. The rights of exclusion--on any basis--are bound up in a nation's sovereignty, rightfully allowing that nation to decide who shall and who shall not cross its borders and shores.

The United States over its own history has developed 33 separate grounds for excluding individuals it determined to be undesirable. These grounds were the subject of intense criticism during the Commission's public hearing process and at its consultations. Although not rejecting the right of this nation to deny entry to certain foreign nationals, witnesses before the Select Commission argued that many of the grounds were archaic, ambiguous and no longer responsive to the needs and interests of the United States. Convinced by these witnesses and its own investigations of the need to reexamine the existing exclusionary grounds, the Commission included a consideration of these grounds in its final meetings held December 6-7, 1980 and January 6, 1981.

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*Janelle Jones, author.

As part of its final decisions, the Select Commission recommended that all 33 of the Immigration and Nationality Act's (INA) grounds for the exclusion of aliens not be retained.* A majority of Commissioners voted against maintaining the status quo with regard to the criteria on which aliens could be barred from entering the United States. Believing, however, that specific changes in these grounds should be discussed in Congress as part of the legislative process, the Select Commission made no recommendations concerning the language or content of any of the grounds, except as applied to lawful permanent residents returning from temporary trips abroad.**

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*Commission members voted 13 to 3 against retaining the present grounds of exclusion; 13 Commissioners supported a congressional reexamination of the exclusionary grounds (2 Commissioners were absent and former Rep. Elizabeth Holtzman was no longer a member of the Select Commission). See U.S. Immigration Policy and the National Interest, pp. 282-283.

**For the specific wording of the recommendation and discussion concerning lawful permanent residents and the reentry doctrine, see U.S. Immigration Policy and the National Interest, pp. 284-286.

To assist the Congress in this review and in keeping with the Commission's pledge to supply the President and the Congress with further research in support of the recommendations already presented, the following discussion analyzes how the grounds for exclusion were formulated over the years, the impact of the current grounds and the changes recommended by the Commission staff. While the conclusions reached in this discussion are those of Commission staff and do not represent a consensus among Commission members, the discussion provides much of the information presented to the Commission in this area and should be of help to those involved in the policy-making process.

Staff Considerations

In evaluating the existing grounds of exclusion and making its recommendations, the Commission staff weighed the legitimacy of each exclusion against the following questions:

- In what ways, if any, does it protect society from potential public harm to U.S. national security, public safety, public health and the general welfare?
- How extensive and serious is that potential injury?

- How costly is the standard of exclusion to apply and how effectively can it be administered?
- What injury is done to American values as incorporated in general standards of jurisprudence by its application?
- What injury is done to the individual or to petitioners who seek to reunify families or bring an otherwise needed and desired person to the United States?

Using these guidelines the staff sought to balance the U.S. interest in reunifying families and admitting other immigrants with its interest in protecting U.S. society against potential public injury. The current list of exclusions did not pass through such a test. To the contrary, existing grounds for exclusion rose out of the passions of particular periods in U.S. history without any thought for the balancing of various interests and/or rights. Rather than constituting a system of exclusions, they are merely a haphazard collection of grounds that have grown in piecemeal fashion over the years, as the following history shows.

Exclusions in Federal Law: A Brief History*

This history of exclusionary grounds is not meant to provide an exhaustive discussion of the evolution of each of the exclusionary criteria with the specific reasons behind them.[1] It is, instead, designed to place the current 33 grounds of exclusion in a general historical context, as an aid to understanding how and why they were formulated.

◦ 1875 to 1903: Early Federal Controls

As discussed in Chapter V, this nation--during the first hundred years of U.S. history--welcomed immigration and benefited from the millions of immigrants who came to begin new lives. During these years only the Alien Act of 1978--authorizing the President to expel any alien deemed dangerous--attempted to restrict permanent entry to the United States.** Groups opposed to this unimpeded entry of aliens were unsuccessful in their efforts to restrict immigration until 1875 when their demands resulted in federal legislation. In that year legislation was passed barring the immigration of convicts and prostitutes to the United States.[2] Five years later, in 1882, the classes of aliens inadmissible to the United States increased to include idiots, lunatics, those liable to become public charges and Chinese laborers;* contract laborers were added to the list in 1885.

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*For a chart detailing exclusions as part of U.S. immigration history, see table entitled National and International Influences on U.S. Immigration at the beginning of this report.

**From the earliest times, however, various towns and states prohibited certain persons such as paupers or prostitutes from settling permanently within their boundaries.

Then in 1888, in response to increasing numbers of immigrants from southern and eastern Europe, a Select Committee of the House of Representatives conducted an investigation of immigration. This committee and another like it in the Senate collected evidence to show that these new immigrants--entering the United States in high numbers--were undesirable. These congressional conclusions, reached at a time when the United States was prosperous but experiencing labor and agricultural unrest, resulted in additional bars to immigration in 1891. As part of a codification of general immigration law which placed immigration wholly under federal authority, the following grounds for exclusion were added: those suffering from a loathsome or dangerous disease, polygamists, paupers (although persons whose passage had been paid by a friend or relative in the United States were not included) and those convicted of crimes involving moral turpitude (convictions for political offenses not included).

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*The exclusion of Chinese laborers was the result of the Chinese Exclusion Act which was passed in 1882 and which remained a part of immigration policy until its repeal in 1943.

The years which followed continued to see widespread support of immigration restriction. In the presidential campaign of 1892, the three leading parties--Democrats, Republicans and Populists--all adopted planks favoring the restriction of immigration. The American Protective Association which arose in the late 1880s and early 1890s directed its activities against Catholics whose numbers in this country had grown as a result of increased immigration from southern and eastern Europe.* Another organization which grew out of similar sentiment was the Immigration Restriction League. In the years of the severe industrial and agricultural depression which followed the Panic of 1893, the League conducted an inquiry of states, asking whether they needed immigrants and, if so, what races were preferred.

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*For a description of the activities of the American Protective Association, see John Higham Strangers in the Land, Patterns of American Nativism 1860-1925 (New York: Atheneum, 1963) pp. 80-87.

During the 1890s, the Congress continued to support restrictions on immigration, favoring a literacy test as a means of determining those able to enter the United States. The Senate committee on immigration wished to deny entry to those who could not write or read as a further means of excluding a large portion of the immigrants from southern and eastern Europe who were believed to be undesirable. In 1896 a literacy-test bill passed the Senate to join already-existing House legislation and the two were combined into a legislative proposal that was vetoed by President Grover Cleveland in 1897.

Congressional interest in the of a literacy test did not wane, however. The concept of a literary test was to rise in 1903* and again in 1913 before it was finally incorporated into the existing exclusionary grounds in 1917 over the veto of President Woodrow Wilson.

° 1903 to 1917: The Rise of General Immigration Laws

The first general immigration law was signed by President Theodore Roosevelt on March 3, 1903. Formulated in a decade when antagonism against immigrants from southern and eastern Europe was high, it was designed primarily to codify existing immigration law. At the same time, however, it increased the number of exclusionary grounds. These additional grounds included epileptics, those who had one attack of insanity within five years of entry or two or more attacks of insanity, beggars, those who brought women prostitutes into the country and anarchists.

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*The following year, the Congress created an Industrial Commission with power to investigate questions concerning immigration and to suggest appropriate legislation. The Commission's recommendations, published in 1901, were presented to the House of Representatives in the form of a legislative proposal to which that body added a literacy provision for immigrants. The legislation stipulated that individuals who were over 15 years old and unable to read some language were to be barred from entering the United States; wives, children under 18 years of age and grandparents of admissible immigrants were exempt from this requirement. As a result of Senate action which eliminated it, however, this literacy test was not part of the bill sent to President Roosevelt and approved on March 3, 1903. This setback in legislating an exclusion based on literacy was only temporary. Yet another temporary setback followed in 1913. In the closing weeks of the Taft Administration, Congress passed another bill containing a literacy test which was vetoed by the outgoing President.

The Immigration Act of 1903 was the first statute to deny admission to the United States on political grounds--subversive beliefs. Reacting to the assassination of President William McKinley in the fall of 1901 by Leon Czolgosz, an anarchist who was thought to be an alien, the Congress provided for the exclusion of anarchists or persons who believed in or advocated the overthrow of the U.S.government, all government or all forms of law by force or violence.[3] While the constitutionality of this statute was challenged in United States ex re Turner v. Williams, the Supreme Court held that the Act was immune from constitutional challenge on two separate bases: the accepted principle of international law that every sovereign nation had the power to forbid the entrance of foreigners and the belief that the power given to Congress to regulated commerce included the power to regulate immigration.*

In yet another codification in 1907, Congress extended the classes of excludable aliens. Entry was now to be denied to imbeciles, feeble-minded persons, those suffering from tuberculosis or with a physical or mental defect that might affect the ability to earn a living, those admitting the commission of a crime involving moral turpitude, women entering the United States for an immoral purpose and children under sixteen years of age unaccompanied by parents.

° 1917: Solidifying the Exclusionary Grounds

One of the provisions of the Immigration Act of 1907 called for the First Select Commission on Immigration, popularly named the Dillingham Commission after its chairman Senator William P. Dillingham of Vermont. The Commission's report, published in 1911 after 3 years of study, generated support for additional restrictions and eventually led to the Immigration Act of 1917. This Act, another comprehensive revision of U.S. immigration law remained (with amendments) a basic immigration statute until its repeal in 1952. Added to the classes of aliens previously inadmissable were: Hindus and other Asiatics,* persons of constitutional psychopathic inferiority, men seeking entry for immoral purposes, chronic alcoholics, stowaways, vagrants and those who had had one or more attacks of insanity (previous legislation had excluded those who had had one attack of insanity within five years of entry or two more more attacks of insanity). And, for the first time illiteracy was included as a bar to entry.

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*This case was a landmark decision in U.S. immigration law as the Supreme Court upheld the right and primacy of the Congress to regulate immigration. Turner, a British subject who entered the United States to promote the interets of organized labor, advocated a "general strike which would spread throughout the industrial world."

National sentiment in 1917 would appear to have favored a literacy test.[4] In the years immediately preceding the introduction of illiteracy as a ground for exclusion, organized labor had warned of the potential dangers to U.S. workers from a new wave of postwar immigration; anti-Catholic feeling and anti-Semetic feelings were high, as was the fear of foreign-born radicals, and a literacy-test bill had passed both houses of Congress by huge majorities. Although the bill which included this literacy test was vetoed by President Wilson, Congress then inserted a literacy provision into the legislation which became the Immigration Act of 1917 over his veto. Under this new exclusionary ground persons over 16 years of age, physically capable of reading and who could not read some language or dialect were inadmissible to the United States. Those exempted from the literacy requirement included the father or grandfather over 55 years of age or a wife, mother, grandmother, or unmarried or widowed daughter of any admissible alien. In addition, the bar did not apply to persons fleeing religious or political persecution, skilled laborers, actors, professional men and others.

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*The Asiatic Barred Zone created by this legislation did not include Japan since immigration from that country was dealt with in a Gentleman's Agreement made by President Roosevelt with Japan in 1907.

- 1918 to 1950: Continued Growth of Exclusions

Following the Immigration Act of 1917, the number of exclusions continued to expand through the passage of further legislation. The Passport Act of 1918 authorized the President to impose additional conditions upon the entry (and exit) of aliens to the United States during wartime. The Anarchist Act of that same year and its amendment in 1920 further enlarged the classes of excludable aliens by adding those individuals who were or had been identified with certain proscribed organizations or beliefs, those who believed in, advised, advocated or taught objectionable doctrines and those who wrote, published, knowingly circulated or displayed literature which advocated such doctrines. The Immigration Act of 1924, which along with the Immigration Act of 1917 set U.S. immigration policy until 1952, introduced yet another exclusionary ground by forbidding aliens who were ineligible for citizenship to enter the United States as immigrants.*

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*Elizabeth J. Harper and Roland F. Chase believe this provision was primarily aimed at the continuing influx of Japanese aliens who found their way into the United States regardless of the Gentlemen's Agreement between the United States and Japan. Elizabeth J. Harper and Roland F. Chase, Immigration Laws of the United States, 3rd edition (New York: Bobbs-Merrill Company, Inc., 1975), p. 14.

Then in 1940 with World War II underway and fears for U.S. security rising, the Alien Registration or Smith Act became law. In seeking to combat sedition and subversion, the Congress once again increased the grounds for exclusion, this time to include past membership in an organization advocating the violent overthrow of the government. This legislative action represented the congressional response to the 1939 case of Kessler v. Strecker in which the Supreme Court had ruled that only present membership in or affilation with a proscribed organization barred admission from the United States.[5]

The national emergency created by U.S. entry into World War II produced additional bars to admitting aliens to the United States. On June 20, 1941 consular officers received the authority to refuse visas to those they believed sought entry for the purpose of engaging in actions which would jeopardize the public safety. The following day, June 21, the Passport Act of 1918 was revived and aliens were denied entry if it was deemed that entry would be prejudicial to the best interests of the United States. In 1944 aliens who had left the United States to evade the draft were also barred from further entry.

° 1950: The Internal Security Act[6]

In 1950 the Internal Security or Subversive Activities Control Act became law over the veto of President Truman. The Act, in which Congress specifically named the Communist Party for the first time, listed the following groups of individuals as inadmissible to the United States:

- Aliens who were members of or affiliated with the Communist Party, its direct predecessors or successors, those advocating or a member or affiliate of a group advocating the doctrine of world communism or any other form of totalitarianism;
- Aliens who became members or affiliates of any other organization registered or required to be registered under this act; and
- Aliens who advocated the overthrow of the United States by unconstitutional means.

It further introduced two, new major exclusionary categories:

- Aliens who sought entry to engage in activities prejudicial to the public interest or endangering U.S. safety and welfare; and
- Aliens who, officials believed, would be likely after entry to engage in subversive activities or join or participate in the activities of an organization registered or required to be registered under this act.

The first of these new exclusions--similar to that authorized under the Passport Act, but not limited to time of war or other national emergency--substantially expanded the basis on which the United States could exclude aliens whose beliefs were considered subversive. The second category allowed the exclusion of an alien if there was merely a reason to believe that he/she would be likely to take part in an objectionable activity.

In addition to specifying inadmissible categories, the Internal Security Act eliminated the discretion to waive inadmissibility for a deserving alien with seven or more years of residence who years before had joined the Communist Party or some other subversive organization. Further, it circumscribed the complete discretion formerly given the Attorney General to waive inadmissibility for persons who might be excludable under these grounds and yet wish to enter the United States on a temporary basis, requiring in those cases where such discretion was exercised in a detailed report to the Congress. Diplomatic immunity was also circumscribed. After 1950, diplomats could be excluded on subversive grounds if deemed necessary by the President.

° 1952: The Immigration and Nationality Act (INA)

In 1952 following a two-year study conducted by the Senate Judiciary Committee chaired by Senator Pat McCarran of Nevada, Congress consolidated the scattered statutes regulating immigration.* Formulated only two years after the Internal Security Act, the INA was a product of the same widespread fears of Communism and the Soviet Union. As such, it virtually duplicated the exclusionary provisions found in the 1950 Act.**

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*Like previous immigration legislation, the Immigration and Nationality Act of 1952 (the McCarran-Walter Act) was passed over the veto of a president, Harry S. Truman, who found the national origins system discriminatory and the exclusions criteria harsh.

**An exemption was granted, however, in the case of aliens whose membership in a proscribed organization was five years removed and followed by active opposition to the ideology of that organization. The admission of these individuals was allowed if found to be in the public interest.

The INA substantially followed the grounds set forth in the Immigration Act of 1917 and like other immigration legislation before it, expanded* the grounds for exclusion to include: aliens convicted of two nonpolitical offenses where the imposed aggregate sentences to confinement were for five or more years; aliens coming to the United States to engage in any immoral sexual act; aliens in violation of narcotic laws, including offenses of possession; narcotic addicts; aliens seeking to procure a visa or other documentation by fraud or misrepresentation of a material fact; aliens admitting the commission of acts which constitute the essential elements of a crime involving moral turpitude and certain alien laborers, if it were determined by the Secretary of Labor that there were sufficient available workers at the location to which they were destined or that U.S. wages and working conditions would be affected adversely.

The Act also permanently barred aliens ineligible for citizenship as a result of draft-exemption claims who had previously been admissible as returning residents and it temporarily barred--for one year--the entry of previously excluded aliens unless they had requested and received permission to reenter the United States from the Attorney General. Further, the language of the public charge exclusion was expanded to state that those likely to become public charges would be excludable when "in the opinion" of immigration officials these individuals were likely "at any time" to become public charges.[7]

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*In two instances the Act eliminated exclusionary grounds: the absolute bar to the admission of Asians was removed and the contract labor laws were eliminated.

° 1961 to 1978: Amending INA Exclusions*

In support of his veto of the 1952 Act, President Truman on September 4, 1952 appointed a special Commission on Immigration and Naturalization, chaired by Philip B. Perlman, a former Solicitor General. In its report, the Commission stated that the INA as passed in 1952 did not "adequately solve immigration and naturalization problems, and that the codification it contains fails to embody principles worthy of this country."[8] In urging a complete rewrite of U.S. immigration law, the

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*This section is based on the information provided in Charles Gordon and Harry N. Rosenfield, Immigration Law and Procedure, Revised Edition, I:2 (New York: Matthew Bender, 1980), pp. 1-20 to 1-32.20.

Commission found many of the grounds for exclusion to be "unwise, unfair and obsolete."[9] Presidents Eisenhower and Kennedy also supported a revision of the Act, although it was not until 1965 that the ground for exclusions received major revision.

In the years preceding this revision, however, there were occasional, minor alterations in the INA's exclusionary grounds:

- 1956 -- The Act of July 18, 1956 specified that a conviction for possessing narcotic drugs was a ground for exclusion.
- 1957 -- Statute enacted on September 11, 1957 waived exclusions for certain relatives of U.S. citizens and resident aliens in the case of criminal or immoral grounds, for tuberclosis or for misrepresentation.
- 1960 -- Act of July 14, 1960 added marijuana to the exclusion concerning narcotics.
- 1961 -- Act of September 26, 1961 eliminated specific references to tuberculosis and leprosy. Excludability for such diseases was to be based on whether the disease was dangerous and contagious. The Act also codified previous statutes dealing with the waiver of inadmissibility for certain aliens who had committed petty or serious crimes, who had made misrepresentations or who were tubercular.

In 1964 and 1965, Senate and House Immigration Subcommittees held hearings which culminated in major legislative amendments to the Immigration and Nationality Act in late 1965. In large measure, the 1965 act was responsive to the proposals of Presidents Kennedy and Johnson for eliminating discrimination based on race or national origin. However, the 1965 amendments also imposed additional limitations on the entry of aliens seeking to perform labor and those from the Western Hemisphere, as discussed in Chapters VI and VII. Despite these major revisions, however, the grounds of exclusion underwent little change: ° All forms of epilepsy were removed as grounds for exclusion;

- The term "feeble-minded" was deleted and "mentally retarded" substituted;
- The term "sexual deviation" was added to provide for the exclusion of both homosexuals and sex perverts; and
- Aliens with close relatives in the United States who had been excludable for mental illness were permitted entry privileges under safeguards similar to those prescribed for aliens with tuberculosis.

Eleven years later, in 1976, legislation was enacted to exclude certain foreign medical school graduates wishing to practice medicine or receive graduate training in the United States. Unless they had passed parts I and II of the National Board of Medical Examiners exam and had demonstrated competency in spoken and written English, foreign medical graduates were to be barred from entering this country. The ground was amended the next year to soften its impact and requirements somewhat.*

The Act of October 30, 1978 once again added to the criteria on which individuals were to be excluded from the United States. The Act barred the entry of individuals who had participated in persecutions between March 23, 1933 and May 8, 1945 under the direction of or in association with the government of Nazi Germany.[10]

° 1981: 33 Grounds for Exclusion

There are, at present, 33 grounds for excluding aliens from the United States. These 33 grounds may be divided into three groups as follows.**

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*In its final report, U.S. Immigration Policy and the National Interest the Select Commission recommended deemphasizing the importance of the Visa Qualifying Exam's Part I on basic biological science (VI.D.2.).

**Division is that followed by Gordon and Rosenfeld.

1. Exclusions Based on the Application Process--aliens previously excluded, deported or removed from the United States, stowaways, certain aliens brought to foreign contiguous territory or adjacent islands on a vessel or aircraft of a nonsignatory line, aliens without documents or with improper documents and aliens who have made willful misrepresentations in seeking entry.

2. Exclusions Based on Individual Characteristics--aliens with certain physical or mental defects, aliens likely to become a public charge, aliens coming to perform certain types of labor, aliens who are illiterate, aliens accompanying excluded aliens, and foreign medical graduates.

3. Exclusions Based on Misconduct--aliens who are criminals, aliens found to be immoral, aliens who are narcotics violators, aliens who are subversives, aliens who participated in Nazi persecutions, aliens who are draft evaders, aliens who are former exchange visitors but have not resided outside the United States for a set period of time.

These grounds are currently applied equally to all aliens who enter the United States. This is true whether the alien be a returning permanent resident who has lived in this country for twenty years or a business traveler coming for a day-long conference.*

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*The Select Commission recomended that permanent residents returning from a temporary visit abroad be exempted from all exclusionary grounds, except for the criminal grounds for exclusion, the political grounds for exclusion, entry without inspection and engaging in persecution. For a discussion of the reentry doctrine and returning permanent residents, see U.S. Immigration Policy and the National Interest, pp. 284-286.

In fiscal year 1976, according to Visa Office statistics 109,204 aliens were refused visas to the United States as immigrants on the basis of these exclusionary grounds; 358,033 aliens were refused visas as nonimmigrants.* Waivers of inadmissibility exist for aliens in both immigrant and nonimmigrant categories, however. In the case of aliens applying for entry as immigrants the Attorney General may waive:

- documentary requirements for returning lawful permanent residents;
- substantive requirements--except those relating to subversives--for returning lawful permanent residents;
- exclusion for criminal or prostitution grounds, for tuberculosis, for mental disorders or for fraudulent visas or entry on behalf of the alien spouse, child or parent of a U.S. citizen or lawful permanent resident; and
- the public charge exclusion for an alien whose entry is accompanied by a bond or other guarantee that the alien will not become a public charge.

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*For a breakdown of the grounds on which these refusals were based, see the table on "Immigrant and Nonimmigrant Visas Refused, Fiscal Year 1976" from the Report of the Visa Office, 1976 (Washington, D.C.: Government Printing Office), p. 76, the most recent data available.

During fiscal year 1980, 893,973 aliens were denied entry to the United States on the basis of one or more exclusionary grounds (811,765 at land ports of entry). Almost all of these persons conceded inadmissibility and withdrew their application for admission. Only 673 aliens underwent formal hearings before an immigration judge and were formally excluded.

IMMIGRANT AND NONIMMIGRANT VISAS REFUSED, FISCAL YEAR 1976

Grounds for Refusal Under the Immigration and Nationality Act		IMMIGRANT		NONIMMIGRANT	
Section		Visas Refused	Refusals Overcome	Visas Refused	Refusals Overcome
101(a)(15)	Aliens who fail to establish that they are entitled to nonimmigrant status			231,088	30,259
212(a)(1)	Aliens who are mentally retarded	271	171	808	367
(2)	Aliens who are insane	5	7	14	4
(3)	Aliens who have had one or more attacks of insanity	33	13	103	100
(4)	Aliens who are afflicted with psychopathic personality, sexual deviation or a mental defect	19	4	39	24
(5)	Narcotic drug addicts or chronic alcoholics	20	2	26	56
(6)	Aliens afflicted with any dangerous contagious disease	1,846	1,092	27	20
(7)	Aliens who have a physical defect, disease or disability which may affect their ability to earn a living	209	61	2	2
(8)	Paupers, professional beggars, vagrants	-	-	-	-
(9)	Aliens convicted of a crime involving moral turpitude or who admit having committed such a crime or committing acts constituting essential elements of such a crime	666	274	777	610
(10)	Aliens convicted of two or more offenses other than purely political offenses for which aggregate sentences actually imposed were five years or more	7	5	27	20
(11)	Immigrants who practice or advocate the practice of polygamy	4	-		
(12)	Prostitutes or procurers - persons coming to the United States to engage in other unlawful commercialized vice	978	659	61	56
(13)	Aliens seeking admission to engage in any immoral sexual act	-	1	2	-
(14)	Aliens seeking admission to perform skilled or unskilled labor for which sufficient workers are available in the United States	1,909	388		
(15)	Aliens likely to become public charges	47,786	16,835	14,905	4,298
(16)	Aliens excluded and deported seeking admission within one year from date of their deportation who have not obtained permission from the Attorney General to apply for readmission	6	3	4	2
(17)	Aliens previously arrested and deported, or removed from the United States who have not obtained permission from the Attorney General to reapply for admission	336	95	180	68
(19)	Aliens who committed fraud or wilfully misrepresented a material fact to obtain a visa or other documentation	1,253	429	1,248	176
(22)	Immigrants who are ineligible to citizenship and persons who avoided or evaded military service in time of war or national emergency	21	3	83	50
(23)	Aliens convicted of violation of law or regulation relating to illicit possession of or traffic in narcotic drugs	76	12	213	134
(24)	Aliens who seek admission from foreign contiguous territory or adjacent islands, having arrived there on a vessel or aircraft of a nonsignatory line	1	-	-	-
(25)	Immigrants over 16 years of age physically capable of reading who cannot read and understand some language or dialect	96	75		
(26)	Nonimmigrants not in possession of valid passports or other suitable travel documents			379	138
(27)	Aliens who, after entry, might engage in activities prejudicial to the public interest, or endanger the welfare, safety or security of the United States	4	1	63	-
(28)	Aliens who are or at any time have been anarchists, communists or other political subversives	49	16	19,305	18,300
(29)	Aliens who, after entry, probably would engage in espionage, sabotage or other subversive activity - or who would join, affiliate with or participate in any organization registered or required to be registered under Section 7 Subversive Activities Control Act of 1950	1	-	6	-
(31)	Aliens who have encouraged, induced, assisted, abetted or aided other aliens to enter the United States in violation of law	19	1	33	58
212(e)	Former exchange visitors who have not resided abroad for two years following departure from the United States	25	9	-	192
221(g)	Aliens whose applications do not comply with the provisions of the Immigration and Nationality Act or regulations issued pursuant thereto	56,504	34,083	97,078	33,398
	Total Grounds for Refusal	112,224	54,252	366,151	88,546
Number of Applicants [1]		109,204	53,317	358,033	86,080

SOURCE: 1976 Report of the Visa Office, Bureau of Security and Consular Affairs, Department of State Publication 8926, Department and Foreign Service Series 164. Washington, D.C.; Government Printing Office, 1977.

NOTE: This table does not include exclusions at the time of entry.

[1] The total of grounds for refusal may exceed the total number of applicants refused a visa because an applicant may be refused under more than one section of the Immigration and Nationality Act.

As for the exclusion of aliens applying for entry as nonimmigrants, the Attorney General may waive:

- documentary requirements for entry because of unforeseen emergency, on the basis of reciprocity for certain aliens coming from foreign contiguous territory or adjacent islands and as a result of transit agreements; and
- substantive requirements for entry waivers in cases relating to national welfare, safety or security. These require a detailed report to Congress.

Exclusions and the National Interest

There is no question that the United States has the right and obligation to bar the entry of aliens whose presence in the United States is likely to be harmful to the national interest. Unfortunately, the legislation which has added new grounds of exclusion has not always been considered in terms of the national interest. In the Immigration Act of 1917--which barred the entry of certain Asians and those who were illiterate --racial, religious and nationality biases formed the basis for exclusion. In 1952, widespread fear of the Soviet Union led to legislation which excluded individuals for certain beliefs, rather than actual or likely behavior. As a result, many distinguished scientists and philosphers were barred from the United States. Acknowledging that such influences have made their way into the grounds for exclusion, the need for a reexamination of these grounds, using the criterion of U.S. national interest, becomes clear.

Keeping in mind the transient circumstances and pressures which produced the current 33 exclusionary grounds, the Select Commission staff has assessed their relevance in terms of U.S. interests. In completing this analysis, staff members have drawn on three major sources of information to supplement staff research: the public hearings conducted by the Select Commission, the legal research conducted by a selected group of individuals with expertise in immigration law and the work of the Commission's own Subcommittee on Legal Issues.

Public Hearings

One individual summed up the concerns of the witnesses who testified before the Select Commission on the impact of exclusions when he said, "important changes are urgently needed to assure fairness, alleviate harshness, simplify procedures, drop unrealistic requirements and eliminate dead wood."[11] Those who appeared before the Commission argued against what they believed to be the unnecessary complexity and inflexibility, the archaic language and outdated concerns of section 212 (a) of the Immigration and Nationality Act which deals with the grounds for exclusion.

Henry Steiner of Harvard University's School of Law spoke of the "deep embarrassment" to the United States caused by the exclusion of intellectuals, tourists and students on the basis of belief in "subversive" doctrines.[12] Dr. Oldrich Kyn, a Professor of Economics at Boston University, shared his own personal experience with this type of exclusion and its practical implications. Dr. Kyn had had to join the Communist Party in Czechoslovakia before being allowed to teach at the university level. Alleging harassment by INS officials, he stated that this involuntary membership was taken as a "presumption of guilt," as evidence that he advocated the violent overthrow of the U.S. government.[13]

Lory Rosenberg of Cambridge Legal Services testified that the section's public charge provision deferred to "individual judgments" with the result that it was "notoriously unevenly imposed and essentially nonreviewable." Ms. Rosenberg argued that the public concerns the public charge provision was designed to protect were not actually protected by this exclusionary ground.[14] In the case of exclusion based on narcotics convictions, Deborah Anker of Boston's International Institute criticized the inflexibility and harshness of this exclusion which perpetually bars the entry of all drug offenders--even lawful permanent residents with long periods of residency--from the United States. The ground she pointed out made no distinction between the narcotics trafficker and the person guilty of possession of one marijuana cigarette, nor did it consider mitigating circumstances. Ms. Anker called this particular provision

> "among the most irrational and archaic in the INA, adopted to implement past conceptions about the causes of illicit narcotic drug traffic and addiction which have now become totally discredited in the eyes of professionals, as well as in the opinion of the American public."[15]

No testimony better illustrated the hardship imposed by the broadly defined narcotics exclusion than that of Jeffrey Bihr. Mr. Bihr, a U.S. citizen, told Commission members his French Canadian wife was permanently ineligible for a visa--immigrant or nonimmigrant--because of a conviction for possession of less than half an ounce of marijuana. Noting there was no avenue of appeal, Mr. Bihr said:

> In light of recent legislation . . . reducing the penalty of possession of marijuana to a misdemeanor and a general relaxation of public opinion, the immigration law separating myself from my wife seems unduly harsh . . . .
>
> I love my country and the principles for which it stands. I realize the importance of the existence of certain standards of immigration to uphold those very principles. Yet I cannot help but question the application of power that separates husband from wife for so small a matter.[16]

No basis for exclusion brought more testimony than that of homosexuality. Calling this exclusion "a legacy from the McCarthy era," Charles Brydon, Co-Executive Director of the National Gay Task Force, testified as did others that the willingness to view suspected homosexuals as "psychopathic personalities," "sexual deviants" or "mentally afflicted" is "both an embarrassment to U.S. policy and a potential violation of the immigration law itself."[17]

Expert testimony on the current medical attitude toward homosexuality was supplied by Dr. John Spiegel, past President of the American Psychiatric Association (APA). Dr. Spiegel testified that on December 15, 1973 the APA's board of directors had voted to remove homosexuality from its lists of sexual deviants and mental disorders or illness. The board was concerned with "possible abuse of psychiatry . . . by concerning itself with the making of this diagnosis when that diagnosis was going to be used for social control rather than really for the treatment of medical illness." Dr. Spiegel concluded his remarks stating that "it seems very difficult to us who are psychologists and students of this behavior to know how someone examining or looking at a person very briefly can come to such a decision, and we would also regard that as an abuse."[18]

Former INS Commissioner Leonel J. Castillo and acting INS Commissioner David Crosland also spoke to the Select Commission on the difficulties of administering the exclusions on homosexuals. Mr. Crosland informed the Commission that until August 1979, INS had referred suspected homosexuals to the U.S Public Health Service for a medical determination. In August, however, the Surgeon General refused to accept such referrals on the basis that homosexuality could not be determined through medical diagnosis. The Immigration Service, Mr. Crosland noted, was attempting to prepare operating instructions for field officers, to direct them on the procedures to follow in making a determination of suspected homosexuality.[19]

Former Commissioner Castillo in his testimony before the Commission pointed out that there was really no way of determining homosexuality unless an individual indicated his/her sexual preference to the INS inspector. Mr. Castillo also urged that this particular exclusionary ground be eliminated.[20]

In addition to the testimony of expert witnesses on the bar to entry resulting from homosexuality, the Commission was presented with accounts of personal experiences. Stanley Rebulton informed those Commission members present that his sister cannot visit him in this country, even temporarily, because she has stated that she is a lesbian.[21] Lucia Valeska of the National Gay Task Force related the story of the harrassment of a group of women traveling from Canada to a music festival in Hesperia, Michigan in 1979.[22] Barrett Brick, although a U.S. citizen and not subject to exclusion, recounted his personal experience as a suspected homosexual entering the United States and the resulting humiliation.[23]

This testimony and that provided by the other witnesses familiar with the day-to-day effects of U.S. exclusions policy revealed to Commission members that exclusions often result in severe personal hardship and considerable enforcement costs without any direct benefits to the national interest. The often moving statements--oral and written--provided by those who appeared before the Commission played an important role in the staff review of the current grounds for exclusion. Information concerning the effects of particular exclusionary grounds not only gave the Commission staff an opportunity to assess whether, in practical terms, the current grounds for exclusion protect or promote the national interest but provided guidelines for the revision, consolidation and streamlining of these grounds.

Legal Research Consultation

Held the week of September 22, 1980, the legal research consultation brought together lawyers and other experts familiar with immigration law to draft new statutory language for consideration by the Select Commission.[24] The resulting redraft of section 212(a) made significant changes in the in the exclusionary grounds through consolidating the requirements for entry, removing grounds that caused private injury without protecting U.S. society, restricting the Attorney General's authority in granting waivers and setting statutes of limitations for certain exclusionary grounds.

Specifically, consultation participants agreed that:

- sexual preference should not constitute a ground for exclusion and homosexuality should be eliminated as an inadmissible ground;
- the possession of under 100 grams of marijuana does not constitute a crime of the same magnitude as trafficking or sales and recommended the possession of under 100 grams of marijuana should be eliminated as an exclusionary ground while trafficking or sales should be retained;
- an exclusion based simply on Nazi persecution is too narrow and should be expanded to include a general bar for all persecution;
- the past practice of prostitution presents no threat to U.S. society and should be dropped. Only those coming to the United States principally or incidentally to engage in prostitution or the managing of prostitutes should be excluded;
- those who advocate polygamy should not be excluded for mere belief; instead the exclusion should focus on those who practice polygamy;
- the current language with regard to medical school graduates is too broad. The language should instead state that the applicant is coming "primarily" to engage in patient care;

- the ground which excludes those at any time likely to become public charges is too broad and difficult to administer and should be revised to bar only the entry of those likely to require public assistance within three years after entry;

- requiring those individuals who enter on immigrant visas to be eligible for citizenship is unnecessary and should be discontinued;

- statutes of limitations could be imposed on the following exclusionary grounds without endangering the public safety.

  a. 5-year limit on exclusion involving aliens who have committed one crime involving moral turpitude and

  b. 5-year limit on exclusion in cases where aliens have sought admission by fraud and for those convicted of smuggling.

- nondiscretionary waiver could be made available for aliens in the categories immediately above and below without endangering public safety:

  a. aliens convicted of two offenses if they are specified relatives of U.S. citizens or lawful permanent residents; and

  b. aliens convicted of "knowing" marijuana possession of over 100 grams, if five years have passed since time of the offense.

- the power of the President to suspend the admission of any alien determined to be detrimental to national interests is too broad and should be restricted to times of war or national emergency. The President should be required to consult with the Congress before acting.

Commission's Subcommittee on Legal Issues

Select Commission Chairman Theodore M. Heburgh appointed a subcommittee of commissioners to conduct a detailed review of several complex legal issues--including the grounds for exclusion--which would be discussed and voted on at the Commission's final meeting in January. Composed of Attorney General Benjamin Civiletti (Chairman), Judge Cruz Reynoso, Congresswoman Elizabeth Holtzman and Senator Alan Simpson, the Subcommittee met on December 16, 1980.[25] A majority of the subcommittee's members agreed that the consolidation and conceptualization presented below represented an appropriate approach to the formulation of categories on exclusion.

- Health Grounds--to exclude persons with medical problems which pose a threat to public health; for example, aliens with infectious communicable diseases which constitute a public health danger determined by the U.S. Public Health Service; aliens afflicted with psychotic disorders or severe mental retardation or aliens who are narcotic drug addicts or afflicted with chronic alcohol dependence.
- Security Grounds--to exclude persons whose entrance might adversely affect national security or safety; for example, aliens who are active in organizations that are engaged in violence or terrorist activities;

- Criminal Grounds--to exclude aliens involved in serious violent misconduct, with allowance for rehabilitation in the case of other crimes (other than a purely political offense) punishable by a sentence of more than one year (or convicted of two or more crimes punishable by a sentence of more than one year in the aggregate) committed within five years of application for admission; aliens involved in a crime of violence or serious bodily injury within fifteen years of application for admission; aliens convicted of premeditated murder; and aliens convicted of any narcotics violation involving knowing possession of more than 100 grams of marijuana and aliens convicted of trafficking or whom the consular officer has reason to believe are traffickers.

- Economic Grounds--to exclude aliens likely to become public charges and those unable to maintain themselves in the United States for three years after entry without applying for public assistance.

- Moral Grounds--to exclude aliens who have engaged in persecution.

The Subcommittee recommended that the status quo be maintained with regard to immigrant waivers. Except in the case of grounds relating to security, murder and persecution, waivers may be given to close relatives of U.S. citizens, lawful permanent residents and entering immigrants in cases of extreme hardship and to allow family reunification. Discretion to grant such waivers, the Subcommittee agreed, should rest with the Attorney General. After considering nonimmigrant waivers, the subcommittee recommended that no grounds of exclusion should apply to nonimmigrants other than those relating to security, public health, criminal conduct or persecution. In addition, the subcommittee believed that the grounds involving public health and criminal conduct (other than murder) should be open to waiver in individual cases at the discretion of the Attorney General.

SECTION TWO*

Staff Proposals on Exclusionary Grounds

There is no question that the United States must have a statutory means of preventing the entry of individuals whose presence in this country would threaten U.S. well-being. Any government must be able to exclude potential immigrants and nonimmigrants when entry would be likely to endanger the public health, welfare and safety or threaten national security. It is not only a matter of national security or national sovereignty, but of the need to protect national interests.

Considerations in Choosing a System of Exclusions

Acknowledging the right and need of this nation to exclude any alien who would cause public injury, the Commission staff designed a list of criteria against which it measured the existing 33 grounds of exclusion. Based on the concerns voiced at public hearings, at the Commission's legal consultation and at the meetings of its Legal Issues Subcommittee, this list is based on the premise that, in addition to protecting the public health, welfare and safety and maintaining national security, exclusionary grounds should also:

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*Staff document.

- Reflect the ideals of this nation

  The historic commitment of this nation to the ideals of personal freedom, equality and equal opportunity means that any ground for exclusion must be protective of U.S. society in the broadest sense, nurturing its ideals while providing for its safety. For the United States, it cannot simply be a matter of deciding who does and who does not threaten U.S. interests.

- Provide for the uniform, fair and effective administration of U.S. immigration law

  The current 33 grounds of exclusion are a labyrinth of waiver and amendment which require considerable time to apply fairly and which often result in complaints and challenges from those who were denied visas or entry because of them.

- Impose no unnecessary personal injury on petitioners and potential beneficiaries

  Some of the current exclusionary grounds keep families separated for reasons that do not relate to public health, nor to national security or serious misconduct on the part of the alien seeking admission.

- Be cost-effective

  The costs of administering a ground of exclusion must be considered in relation to its ability to protect U.S. national interests. If an exclusionary ground results in high administrative costs but no appreciable protection of public health, welfare and safety or national security, cost-effectiveness argues against the retention of that ground.

Using this list of critieria as a guide to determine which exclusions should be retained and which should be revised or eliminated, the Commission staff has developed a list of 16 proposed exclusionary grounds. It believes these grounds will fully protect U.S. interests, and that because of the incorporation of the principles set forth in the criteria, they will do so without the confusion and controversy which surround the current 33 exclusions. These new grounds have three main emphases: support for national ideals, simplicity and clarity, and humane and cost-efficient enforcement.

Support for National Ideals

The staff has concluded that in keeping with historic U.S. commitment to personal freedom, equality and equal opportunity --the first principle noted above--the grounds for exclusion must focus on the individual whose entry would jeopardize U.S. security, health, safety or welfare. In the past, exclusionary grounds have, at times, been used to restrict entry on the basis of nationality or race. Present grounds include bars based on personal beliefs and private tastes. The staff believes that exclusions based on such grounds stand in opposition to the ideals of this nation which stress personal freedom and are inconsistent with U.S. jurisprudence. Instead, U.S. exclusionary grounds should reflect the fact that this nation does not seek protection from the diversity that arises out of race, nationality or belief, but from the individual who personally poses a threat to U.S. well-being. Therefore, in setting forth new grounds for exclusions, the staff has emphasized that only individuals who fall into three general categories should be excluded from this country:

- those whose immediate physical or mental conditions endanger the public health, safety or welfare;
- those whose past acts or apparent intentions pose a threat to the security of the United States or the safety or welfare of its citizens; and
- those who have attempted to deceive U.S. authorities in order to enter or remain in the United States in violation of its law.

Limiting the application of exclusions to these individuals will fully protect U.S. interests and at the same time uphold national belief in the right to personal freedom.

Simplicity and Clarity

By eliminating all exclusions based on personal belief or private taste, the revised exclusions also avoid the problems which have resulted from government attempts to adjudicate these matters. Such exclusions have been and are virtually impossible to administer in an effective manner and as such violate not only the first principle of national ideals but the second as well--the uniform, fair and effective administration of U.S. immigration law. The staff, seeking to improve the administration of that law, emphasized the need for simplicity and clarity of definition in rewriting the grounds of exclusion. Recognizing that being able to effectively adjudicate and implement the grounds of exclusion is equally as important as determining them, the staff sought to clarify and simplify not only the grounds for exclusion but also the terms used in these grounds. The tremendous changes that have occurred in nomenclature and jurisprudence since many of these grounds were first introduced required an updating of terminology as well as simplification and clarification.

As part of its effort to simplify and clarify, the staff also revised the concept of waivers that now exist for many exclusionary grounds. Available for certain relatives of U.S. citizens and lawful permanent residents, these waivers which require individual discretionary decisions are time-consuming and result in complaints. After its review of these waivers, the staff recommends that the general provision which now allows the Attorney General to waive certain grounds be replaced by language specifying that waivers must be granted if statutory criteria are met. By revising this general provision, the staff believes that administrative efficiency and consistency will be increased.

Humane and Cost-Efficient Enforcement

As for its consideration of the third and fourth criteria --the imposition of no unnecessary personal injury and cost-effectiveness--the staff before making each of its recommendations sought to assess whether the private injury and/or cost associated with enforcement was outweighed by the potential public injury. In cases where the staff determined that families were being separated for reasons which were not related to public health or security or serious misconduct on the part of the alien, it moderated its grounds for exclusion.

PROPOSED EXCLUSIONS*

The following exclusionary grounds are grouped under the particular national interest they are intended to protect --public health, welfare and safety or national security-- or the activity they are intended to prevent--entry violations.

HEALTH

To protect the public health of the United States, the staff recommends only one exclusionary ground: "infectious communicable disease which constitutes a significant danger to the public health as determined and proclaimed by the Surgeon General of the United States."[26] This change is significant because it gives the U.S. Public Health Service a role in making the determination of what constitutes a communicable disease of significant danger to public health. Previously the U.S. Public Health Service involvement has been in the

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*See the charts on "Select Commission Staff Proposals, Summary of Exclusions" and "Comparison of Present Grounds of Exclusion and Select Commission Proposals."

COMPARISON OF PRESENT GROUNDS OF EXCLUSION AND SELECT COMMISSION PROPOSALS

SEC. 212 (a) IMMIGRATION AND NATIONALITY ACT	SELECT COMMISSION PROPOSALS
(1) Mentally retarded	Yes (profoundly or severely retarded only)
(2) Insane	Yes (psychotic disorder; must be current not past disease)
(3) One or more attacks of insanity	No (except as subsumed under current psychotic disorder)
(4) Afflicted with psychopathic personality, or sexual deviation, or a mental defect	No (psychopathic personality redefined under psychotic disorder; mental defect only as under public charge)
(5) Narcotic drug addicts or chronic alcoholics	Yes
(6) Afflicted with any dangerous contagious disease	Yes (only those, however, which constitute a significant public health danger)
(7) Physical defect, disease, or disability affecting ability to earn a living	No (subsumed under public charge provision)
(8) Paupers, professional beggars, or vagrants	No (subsumed under public charge provision)
(9) Crimes of moral turpitude	Yes (if sentenced to confinement for more than one year)
(10) Convicted of two or more nonpolitical offenses with imposed aggregate sentences of five or more years	Yes (if convicted and sentenced to confinement for more than 1 year or convicted of premeditated murder, rape, child abuse)
(11) Practice or advocate the practice of polygamy	Yes (only if coming to practice)
(12) Prostitutes or procurers	Yes (only if coming for purpose of prostitution or procuring)
(13) Seeking admission to engage in any immoral sexual act	No (subsumed under coming to practice prostitution or procuring)
(14) Uncertified skilled or unskilled labor	Yes (amended provisions)
(15) Likely to become a public charge	Yes (amended provisions)
(16) Excluded and deported within one year	Yes (with modification)
(17) Previously arrested and deported	Yes (with modification)
(18) Stowaways	Yes
(19) Obtained visa or seeks to enter U.S. by fraud or willful misrepresentation	Yes
(20) Immigrant without valid visa	Yes
(21) Issued visa outside of preference system	Yes
(22) Ineligible for citizenship or evaded military service in time of war or national emergency	Yes (for draft evaders only)
(23) Past conviction for drug possession or trafficking	Yes (with modifications)
(24) Arrival by vessel or aircraft of nonsignatory line	No
(25) Illiteracy	No (subsumed under public charge)
(26) Nonimmigrants not in possession of valid passports or other suitable travel documents	Yes
(27) Intent to engage in activities prejudicial to the public interest	Yes (with modification)
(28) Anarchists, communists, or other political subversives	Yes (if coming to engage in terrorist activities; no exclusion for beliefs)
(29) Entering to engage in espionage, sabotage or other subversive activity	Yes (with modification)
(30) Alien accompanying another alien ordered to be excluded and deported whose protection or guardianship is required by the alien ordered excluded and deported	Yes (with modification)
(31) Aliens who have encouraged, induced, assisted, abetted or aided other aliens to enter U.S. in violation of the law	Yes
(32) Foreign medical school graduates	Yes (with modification – see Section 212 [i])
(33) Nazi war criminals	Yes

SELECT COMMISSION STAFF PROPOSALS
SUMMARY OF EXCLUSIONS

Objectives for new grounds of exclusion are 1) prevention of injury to American society and 2) uniform, fair and effective administration of U.S. immigration laws.

EXCLUSION	GROUNDS	RATIONALE	WAIVERS*	
			Specified Relatives**	Others
1	A. Severe or profound mental retardation	Welfare	None	None
	B. Psychotic disorder	Safety	None	None
	C. Narcotic drug addiction	Safety/welfare	None	None
	D. Chronic alcoholic dependence	Safety/welfare	None	None
	E. Infectious communicable disease	Health	None	None
2	A. 1 conviction for moral turpitude for which sentenced to confinement or confined in penal institution for more than 1 year and if less than 5 years elapsed from conviction or release, whichever is later	Safety	Bar dropped 3 years from conviction or release (Attorney General may withhold normal waiver)	Bar dropped 5 years from conviction or release
	B. 2 or more convictions for moral turpitude for which sentenced to confinement or confined in penal institution for more than 1 year and if less than 10 years elapsed from conviction or release, whichever is later	Safety	Bar dropped 5 years from conviction or release (Attorney General may withhold normal waiver)	Bar dropped 10 years from conviction or release
	C. Conviction for premeditated murder, rape, child abuse, 2 or more crimes involving a deadly weapon	Safety	None	None
3	A. Conviction for drug possession (for marijuana must be more than 100 grams)	Safety	Bar dropped if alien not committed crime within 5 years prior to visa application	If convicted of 1 crime before age 18, automatic waiver
	B. Conviction for trafficking (for marijuana must be more than 100 grams)		None	If convicited of 1 crime before age 18 (involving marijuana only), automatic waiver
4	Smuggling	Safety/entry violation	None	None
5	Draft evasion (only to apply during war and national emergency or 10 years thereafter)	National security	Bar dropped 10 years after war or emergency	Bar dropped 10 years after war or emergency
6	Nazi persecutor	Safety	None	None
7	A. Coming to engage in espionage, sabotage, terrorism	National security	None	None
	B. Coming to overthrow U.S. government	National security	None	None
	C. Coming to engage in criminal activities	Safety	None	None

8	Alien whose presence is contrary to U.S. interest for foreign policy reasons; determination to be made by Assistant Secretary for Consular Affairs or above; report to Senate and House within 30 days of exclusion	National security	None	None
9	A. Coming to practice prostitution or procuring B. Coming to practice polygamy	Safety/welfare Safety/welfare	None None	None None
10	Protection of U.S. workers (applies only to other independent immigrants)	Welfare	Not applicable	None
11	Public charge (alien must show can maintain self and dependents for 3 years by a. job offer; b. affidavit of support; or c. sufficient personal resources)	Welfare	(Permanent resident aliens reentering within 3 years are subject to deportation for becoming a public charge but not to exclusion)	
12	Any alien who 1 year prior to application was:			
	A. Excluded under Section 236 B. Deported from U.S. under Section 242 C. Departed voluntarily from U.S. at government expense D. Fell into "distress" and was removed provided in A-D alien is told at time that he is excludable for 1 year	Entry violation Entry violation Entry violation Entry violation	May apply for permission to reenter after one year	May apply for permission to reenter after one year
	E. Removed as an enemy alien	Welfare/safety	Attorney General can approve readmission	Attorney General can approve readmission
13	Stowaway	Entry violation	None	None
14	Alien who seeks to or procures false entry documents to gain admission to U.S. (if done within past 5 years)	Entry violation	Bar dropped if otherwise admissible (Attorney General may withhold normal waiver)	Bar dropped after 5 years
15	Alien who seeks to enter as an immigrant with false documents or no documents (without inspection)	Entry violation	None	None
16	Alien who seeks to enter as a nonimmigrant with false documents or no documents (without inspection)	Entry violation	None	None

*Nonimmigrant aliens excludable only under 2C, 3B, 6, 7, 8, 9A or if the Attorney General determines that entry would be contrary to U.S. interests.

**Specified relatives include: parent, spouse, son or daughter of U.S. citizen, permanent resident alien or alien lawfully admitted for permanent residence.

listing of diseases considered to be dangerous and contagious. This new exclusionary language, however, grants it the statutory authority to make the determination as to what diseases will actually bar entry. By including such diseases in Public Health Service regulation rather than in immigration statute, the list of dangerous and contagious diseases can easily be revised without changes in the law.

Under the proposed revisions of the Public Health Service regulations which define dangerous and contagious diseases, those conditions which would threaten the national health would be limited to infectious leprosy and infectious tuberculosis.* The Public Health Service believes that virtually all infectious diseases can be arrested and therefore does not consider that such conditions as active tuberculosis, which is now an excludable condition, should continue to bar entry to the United States. It believes that only infectious tuberculosis, as determined by positive smear or bacteriological culture for tubercle bacilli, should be excludable.*

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*Title 42 CFR, Section 34.2, currently defines "dangerous contagious diseases" as (1) Chancroid; (2) Gonorrhea; (3) Granuloma inaguinale; (4) Leprosy, infectious; (5) Lymhogranuloma venereum, (6) Syphilis, infectious stage; and (7) Tuberculosis, active.

Waivers for Health Exclusion

Although a waiver process was enacted in 1961 for aliens afflicted with tuberculosis, the benefit is available only to aliens with close relatives in the United States. Since it is anticipated that Public Health Service regulations would list only infectious tuberclulosis, not easily arrested, this waiver is eliminated.** The deletion of this waiver would also eliminate complex procedures and the need for personnel from INS, the State Department and the U.S. Public Health Service to process and pass upon the merits of each application.

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*Aliens diagnosed with active tuberculosis, as a condition of their entry into the United States, should be required to obtain followup care by a local health care provider in the United States (private physician or local health department).

**The Public Health Service has recommended retention of this waiver.

SAFETY

Commission staff has recommended a number of exclusions to protect the public safety. These exclusions are grouped under the following classifications: physical conditions and misconduct.

Physical Conditions

Psychotic Disorders. The staff believes that it remains in the national interest to bar the entry of individuals when their mental conditions would endanger the public safety by violent behavior or entail long-term institutional care at public expense. It therefore recommends the inclusion of a ground to prevent the entry of individuals with "psychotic disorders."* Recognizing, however, the difficulty of a consular officer or visa officer in determining excludability under this ground, the staff believes that the Surgeon General should issue regulations specifically describing this condition, outlining guidelines for medical examination and determination by physicians overseas, as to when a person may be diagnosed as recovered. This exclusion should apply only to those with existing psychotic disorders--that is, those exhibiting potential violent behavior or the need for long-term institutionalization at public expense--not those individuals with past conditions. Current exclusionary grounds which bar entry for "one or more attacks of insanity"[27] ignore the fact that mental illness--even severe mental illness--can be cured. This harsh approach has resulted in a severe penalty for aliens seeking to join close family members in the United States.

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*The term "psychotic disorder" replaces the phrase "who are insane" in subsection 212(a)(2). The Director of the Quarantine Division of the U.S. Public Health Service has advised that the modern term for this affliction is "psychotic disorder."

As part of its consideration of an exclusion based on psychotic disorder, the staff also reviewed the current exclusion based on the existence of "psychopathic personality," "sexual deviation" and "mental defect."[28] It recommends they be dropped as no longer meaningful. Further, the use of term "psychopathic personality" has been widely criticized for its vagueness and its use as a basis for excluding homosexuals. The removal of homosexuality as a ground for exclusion is based upon the change in generally accepted canons of medical practice which no longer view homosexuality as an illness. Legislative history indicates that at the time of enactment and amendment of this section, Congress viewed homosexuality as a medical matter. However, the Public Health Service has refused as of August 1979 to make certifications, on the ground that homosexuality cannot be diagnosed. In addition, many states have decriminalized private sexual conduct between consenting adults.

Waiver for Psychotic Disorder

The staff recommends that no waiver be given in the case of existing psychotic disorders that would require long-term institutional care at public expense or might result in violent behavior. It believes that by eliminating a prior attack(s) of insanity as a ground for barring entry and providing the clearest guidelines possible for determining psychotic disorders, it is unlikely that this ground would be open to abuse.

Narcotic Drug Addiction/Chronic Alcohol Dependance.*

The staff believes that drug addicts and chronic alcoholics endanger the public safety and recommends that such persons continue to be barred from entering the United States,** as long as their dependence on alcohol/narcotics continues. It further recommends that, to conform to current medical terminology, these conditions be referred to as "narcotic drug addiction" and "chronic alcohol dependence."

Waiver for Narcotic Drug Addiction/Chronic Alcohol Dependence

Recognizing the seriousness of these conditions and their potential to create severe public injury, the staff does not believe that any waiver should be granted in the case of individuals who are dependent on alcohol or narcotics.

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*The staff also considers narcotic drug addiction and chronic alcohol dependence as a danger to the public welfare, in addition to its safety.

**Subsection 212(a)(5) currently excludes chronic alcoholics and narcotic drug addicts.

Misconduct

Moral Turpitude* and Heinous Crimes. Under present law, conviction for or admission of a crime committed at any time in the past** bars an alien's entry to the United States, unless the crime is classified as a petty offense. Such an unqualified bar does not differentiate between the shoplifter and the murderer, the one-time offender and the career criminal, the crime committed thirty years ago and that of last year. Because of the failure to make those distinctions, the INA bars from this country individuals whose entry, as nonimmigrants and immigrants, could benefit the United States. The staff has concluded that only the entry of an individual who has a proven inability to refrain from commiting crimes for a specified period or whose past criminal acts have involved violence (such as premeditated murder, rape, child abuse or two or more convictions for armed assualt) should be barred.

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*Defined as a crime that is in and of itself evil. Murder is a crime of moral turpitude, driving a car without a license is not.

**Except in the case of an alien who is under the age of 18 and who has committed the crime more than 5 years prior to applying for admission.

In recognition of the fact that in the majority of cases those who have been imprisoned for committing lesser crimes have paid their debt to society and should be reunited with their families or otherwise admitted as immigrants or nonimmigrants, the staff proposes a three-part formula for the exclusion of those who have been convicted of a crime prior to seeking entry to the United States. It believes that this formula recognizes the possibility of rehabilitation while providing the necessary protection against the entry of criminals. Under it, individuals would be excluded if:

- they have been convicted of a single crime involving moral turpitude (other than a purely political offense), and sentenced to confinement or confined therefor in a penal institution for more than one year, if less than five years have elapsed from the date of conviction or release from confinement, whichever is later;
- they have been convicted of two or more crimes involving moral turpitude (other than purely political offenses) not arising out of a single scheme of criminal misconduct, and sentenced to confinement or confined therefor in a penal institution for more than one year in the aggregate, if less than ten years have elapsed from the date of last conviction or last release from confinement (whichever is later); or
- they have been convicted of premeditated murder, rape, child abuse, or two or more crimes involving a deadly weapon.

These recommendations focus on conviction because aliens who have not been convicted of a crime should not be excluded from entering the United States.* The current exclusionary ground which bars the entry of individuals who "admit having committed" a crime involving moral turpitude[29] is intended to cover individuals who though guilty of crimes, were not prosecuted. It, however, has presented problems in determining the reliability and validity of admissions of criminal conduct and numerous administrative and judicial decisions have strictly circumscribed the use of confessions to exclude applicants for admission.[30].

Waivers for Moral Turpitude and Heinous Crimes

In the case of a spouse, parent, son or daughter of a U.S. citizen, lawful permanent resident or an alien who has been issued an immigrant visa, the Commission staff recommends the granting of limited waivers in the first two categories of

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*The staff does, however, recommend exclusion where there are "reasonable" grounds to believe that an "immediate, grave and present danger" exists that an alien would after entry be involved in acts prohibited by federal or state criminal law, 212(a)(7)(C) of the staff's Proposed Revision of the Immigration and Nationality Act.

Statute of Limitations for Moral Turpitude and Heinous Crimes

In the case of a spouse, parent, son or daughter of a U.S. citizen, lawful permanent resident or an alien who has been issued an immigrant visa, the Commission staff recommends a statute of limitations for the first two categories of offenses involving moral turpitude. The alien, if a single offender described in the first category, must not have been convicted or confined within the preceding three years. If a double or multiple offender described within the second category, he/she must not have been convicted or confined within the preceeding five years. Unlike the present law, if the statutory requirements are met, a waiver must be granted unless a finding is made in accordance with regulations and criteria prescribed by the Attorney General that admission would oppose U.S. interests. In the case of the third category--conviction of premeditated murder, rape, child abuse, or two or more crimes involving a deadly weapon--the staff recommends no waiver. The seriousness of the offense and potential for public injury argues against any relaxation of the bar to entry.

Drug Possession and Trafficking. Another current exclusionary ground which does not differentiate between degrees of offenses is that which forever excludes aliens on the basis of a past conviction for drug possession or trafficking.[31] In practice, this means that an alien convicted for even unknowingly having one marijuana cigarette in his/her possession receives the same treatment as a professional drug dealer. To remove this inequity, the staff recommends that the ground be modified to exclude an alien "who has been convicted of a violation of, or conspiracy to violate, any law or regulation relating to the illicit and knowing possession of or traffic in narcotic drugs in any quantity or marijuana in a quantity of more than 100 grams."[32] This amendment eases the severity of the present statute by stipulating that possession must be "knowing" and that marijuana possession must exceed a minimum amount--100 grams. Such changes acknowledge the vast difference between the individual convicted of possessing marijuana for personal use and the individual involved in the selling of drugs.

Waiver for Drug Possession and Trafficking

The staff believes that waivers of inadmissibility should be available for one-time juvenile narcotics offenders, and close relatives of U.S. citizens, permanent residents or immigrant visa holders who have been convicted of narcotic drug possession.

To qualify for the waiver, an alien must be otherwise admissible as an immigrant, and must not have committed a narcotics possession offense, or been imprisoned for conviction thereof, within the previous five years. This waiver, is mandatory and must be granted if the statutory criteria are met, unless a finding is made in accordance with regulations prescribed by the Attorney General that the admission of a particular alien would be contrary to the national interest. The staff also recommends a waiver of inadmissibility for one-time juvenile narcotics offenders who have been convicted of trafficking in marijuana only. To protect the public safety, no other waivers should be granted.

Smuggling.* The current bar against an alien who has been, at any time, involved in knowingly smuggling an alien into the United States should be retained.[33]. The breaking of U.S. immigration law and the abhorent nature of trafficking in human beings supports the presence of such a bar to entry.

Waiver for Smuggling

In order to deter evasion of the immigration laws, the staff recommends no waiver of inadmissibility for alien smugglers.

Nazi Persecutor. The staff supports the current bar against any alien who "between March 23, 1933 and May 8, 1945, under the direction of, or in association with, or in furtherance of the aims of the Nazi government of Germany, or any government in any area occupied by the military of the Nazi government of Germany, or government established with the assistance or cooperation of the Nazi government of Germany, ordered, incited, assisted, aided or otherwise participated in the persecution of any person because of race, religion, national origin or political opinion."[34] The presence of these individuals--as well as others who practice the same behavior--whether as immigrants or nonimmigrants threatens the public safety and as such they should continue to be barred from entering the United States.

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*The staff also views smuggling as an instance of entry violation.

Waiver for Nazi Persecutor

The staff recommends that for an act as abhorrent as persecution no waiver of admissibility be granted. The entry of anyone who has persecuted another human being will always threaten the safety of this nation.

Prostitution and Polygamy. The INA currently bars the entry of aliens who practice or advocate polygamy, or are prostitutes or the procurers for prostitutes.* Although the staff would retain the bars concerning polygamy* and prostitution--since these practices are illegal in most jurisdictions of the United States--it would shift the focus of these exclusions from past deeds and belief to anticipated future conduct.**

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*Subsections 212(a)(11) and (12) of the INA. Subsection 212(a)(13) which bars aliens coming to engage in "any immoral act" has been eliminated on the basis of its imprecision and the rarity with which it is used.

New exclusionary grounds would thus bar anyone coming to the United States to practice prostitution, procurement for prostitution or polygamy. This change in emphasis should result in a more economical, easily implemented provision which bars only those who are coming to the United States for the express purpose of engaging in conduct deemed detrimental to U.S. society.

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*Polygamy bar is currently and would continue to be inapplicable to nonimmigrants.

**The staff is aware that persons coming to practice prostitution or polygamy could possibly be included in other grounds for exclusion and that even limiting this ground to persons coming specifically to practice prostitution or polygamy may be difficult to adminster.

Waiver for Prostitution and Polygamy

The current waiver for close relatives of U.S. citizens and permanent residents excluded as prostitutes is expensive and time-consuming to administer. The staff recommends that this waiver be eliminated in light of the less restrictive ground regarding prostitution. Further, no waiver should be instituted in the case of the revised ground for polygamy since that ground has also been made less restrictive and would no longer bar individuals who only advocated polygamy.

WELFARE

The following exclusionary grounds designed to protect the public welfare are grouped under two major headings: physical conditions and economic considerations.

Physical Conditions

Severe or Profound Mental Retardation. Today it is generally agreed that many slightly or moderately retarded people can be self-sufficient, earn a livelihood and present no danger or burden to society. Given the large number of immigrants who come to the United States to join close family members, and medical evidence which indicates that only severely or profoundly retarded persons are likely to become a public burden, slight or moderate retardation should not bar admission into the country.* The staff therefore believes that only those with "severe or profound" mental retardation who would require long-term institutional care in the United States at considerable public expense-admittedly a very small number of persons--present any danger to the public welfare of the United States.**

Waiver for Severe or Profound Mental Retardation

Noting that the exclusionary ground has been made less severe, the staff recommends the removal of the waiver provision for mentally retarded immediate relatives. It notes that administrative efficiency will be promoted by eliminating the need to process and decide these difficult applications for waivers.

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*Subsection 212(a)(1) of the INA currently bars aliens who are mentally retarded.

**Recognizing that within the range of people considered "moderately" retarded some may not be economically self-sufficient, the staff believes that the public charge provision will bar those people likely to become a public charge or to be institutionalized at public expense while enabling many previously excluded individuals to enter.

Economic Considerations

Labor Protection. Aliens who seek admission to the United States as third or sixth preference or nonpreference immigrants, or as certain temporary nonimmigrant workers to perform skilled or unskilled labor for which there are sufficient U.S. workers are currently barred from entering the United States. Recognizing the widespread criticism of the present labor certification process and the manner in which it is administered, the staff recommends an exclusionary ground based on a combination of the pre-1965 labor certification process and a job offer.*

As discussed at length in Chapter VII, under such a system an alien with a job offer would be excluded only if the Secretary of Labor specifically imposed a bar to entry. The Secretary's announcement would invoke the bar against persons entering to engage in a particular occupation in which the Secretary had found that qualified U.S. workers were available or that the admission of certain prospective immigrant workers destined to a specified employer would have an adverse effect on U.S. workers similarly employed. If the Secretary of Labor concluded after investigation that he/she should act, certification would be issued stating that either there were sufficient U.S. workers able, willing, qualified and available to perform a particular occupation in a particular place or that the employment of an alien in a particular occupation in a particular place would adversely affect the wages and working conditions of U.S. workers similarly employed.

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*Commission members were divided on the most appropriate way to protect U.S. workers while efficiently administering the admission of aliens with needed work skills. See U.S. Immigration Policy and the National Interest, pp. 136-139 for a fuller discussion.

Public Charge. Since 1882, federal officials have turned back those considered to be economically undesirable. The current phrase which bars these immigrants, "likely to become a public charge,"[35] is ambiguous and open-ended, calling for a consular officer to speculate on whether an alien seeking entry to the United States is likely *at any time in the future* to become a public charge. The staff believes that these problems could be corrected by:

- setting a three-year-after-entry limit on the time during which an alien must prove he/she will be economically self-sufficient; and

- providing objective standards for determining financial responsibility in the form of proof of personal funds or income sufficient to avoid reliance on public assistance, evidence of prearranged employment in the United States or binding affidavits of support from persons in the United States.[36]

- Waiver for Public Charge

The staff recommends no waiver for the public charge exclusion. It believes that the three-year limit set on self-sufficiency is lenient enough for fair and efficient administration.

NATIONAL SECURITY

The staff has determined that the maintenance of national security requires the following exclusions.

Draft Evasion*

Immigrant aliens who depart or remain outside the United States to evade military service or training in time of war or national emergency are currently inadmissable.* The staff supports this bar but would limit it to those individuals who left or remained outside the United States "solely" for the purpose of evading the draft. Such a ground would not, however, serve as a permanent ban. Ten years after termination of the war or emergency which resulted in the evasion, the ban would be lifted. In addition, only evaders not avoiders would be barred; those individuals who, under law, sought exemption from military service would not be excluded.

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*In the present and proposed law, this ground of exclusion is not applicable to nonimmigrants.

Waiver for Draft Evaders.

No waiver is recommended as the bar to entry is removed 10 years after the war or emergency which resulted in the evasion.

Espionage/Sabotage. The INA currently excludes immigrants and nonimmigrants from the United States on the basis of political beliefs considered objectionable and for future actions which might result from these beliefs.[37] The staff has found the current exclusions which bar entry on the basis of subversive beliefs to be overly broad and redundant and to work against the interests of the United States. Barring individuals whose ideas and beliefs are opposed to the political philosophy which most U.S. citizens hold undermines the concept of intellectual freedom on which the United States was founded. It is a danger to basic U.S. values and our political system to exclude persons on a ground of belief since U.S. society and its institutions are strengthened by the fullest exchange of ideas.

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*Subsection 212(a)(22 of the INA. "Immigrants who are ineligible to citizenship" are also barred by this ground. The staff, in the interests of effective administration, eliminates this phrase from its proposed ground.

The staff believes that it is not ideas which pose a threat to national security but persons who in the past have engaged in espionage, sabotage, terrorism or other similar activities, or who are currently affiliated with those who support such activites. It has therefore shifted the focus of the present subversive grounds--from political beliefs to future acts or conduct--so that only aliens whose actions after entry would be likely to endanger the national security are barred from the United States. Aliens to be excluded as a threat to national security include those entering to:

- engage in sabotage, espionage, terrorism or other activity endangering the national security; or
- oppose, control or overthrow the U.S. government by unlawful means.

The Attorney General, either through immigration officers or consular officials, would be required to determine that there were reasonable grounds to believe that a grave danger existed that an alien would, after entry, be involved in such proscribed activity. Noncriminal conduct such as membership in a political organization, advocacy of political beliefs and writing, publishing distributing political literature in and of itself would not bar admission unless it clearly posed a real threat to national security.

Waiver for Espionage/Sabotage.

No waiver is recommended. The proposed grounds for exclusion have been limited to focus on those actions which present an actual threat to national security, not on belief or philosophy. The staff believes that issuing waivers under these proposed grounds could result in public injury.

Foreign Policy. The staff supports the exclusion of any alien whose presence in the United States is determined to be contrary to U.S. interests for important foreign policy reasons.* It believes, however, that this decision should be made not by the consular officer or the Attorney General as present law specifies, but by the Secretary of State. To ensure that this determination is made at a high policy level, the authority to make the decision could not be delegated below the level of Assistant Secretary of State for Consular Affairs. A detailed report of the pertinent facts in each case would have to be submitted to Congress within 30 days after an alien was refused a visa or adjustment of status.

Waiver for Foreign Policy.

No waiver is recommended. The staff believes that lodging decision responsibility with the Secretary of State or his designate provides adequate flexibility for efficient and fair administration.

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*Aliens are currently excluded under section 212(a)(27) if after entry it is believed they might engage in activities prejudicial to the public interest.

ENTRY VIOLATIONS

A number of exclusionary grounds now bar the admission of aliens who attempt to enter the United States without proper documentation. In support of the need to protect the United States from those who seek fraudulent entry, the staff recommends the retention of those grounds in the following consolidated form:

- Aliens who one year prior to application were excluded or deported, departed voluntarily from the United States at government expense or fell into "distress" and were removed provided they were told at the time that they would be excludable for one year or removed as an enemy alien--consolidation of subsections 212(a)(16) and (17);

  Waiver: Except for enemy aliens, those excluded may apply for permission to reenter after one year. In the case of enemy aliens, the Attorney General can approve readmission.

- Stowaways*--retains subsection 212(a)(18);

  Waiver: None

- Aliens who seek to or procure false entry documents to gain admission to the United States (if done within past 5 years)--consolidates subsections 212(a)(19) and 212(i);

  Waiver: Bar dropped after 5 years for all but specified relatives who would not be excluded if otherwise admissable

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*The staff recognizes that stowaways could be excluded as aliens attempting entry without documents.

- Aliens who seek to enter as immigrants with false documents or no documents (without inspection)--consolidates subsections 212(a)(20) and (21) and 211(c); and

  Waiver: None

- Aliens who seek to enter as nonimmigrants with false documents or no documents (without inspection)--retains subsection 212(a)(26).

  Waiver: None

The staff believes that the consolidation of existing grounds and the substantive changes which have been made will improve administrative efficiency and result in a more fair and uniform enforcement of immigration law.

Conclusion

The staff has attempted to develop and implement a conceptual framework for exclusionary grounds and to specify clearly its rationale for retention or modification of each ground. This presentation plus the proposed statutory language for a redraft of section 212(a)--grounds for exclusion--of the present Immigration and Nationality Act contained in the two volumes previously submitted to the Congress is offered to legislators as additional information for its consideration as it begins the review process.

Footnotes

1. For more detailed explanations of U.S. exclusions history, see J. Campbell Bruce, *The Golden Door: The Irony of Our Immigration Policy* (New York: Random House, 1954); James J. Davis, *Selective Immigration* (St. Paul: Scott-Mitchell Publishing Co., 1925); Roy L. Garis, *Immigration Restriction, A Study of the Opposition To and Regulation of Immigration into the United States* (New York: The MacMillan Company, 1928); Charles Gordon and Harry N. Rosenfield, *Immigration Law and Procedure*, Revised Edition, Vol. I (New York: Matthew Bender, 1980); Elizabeth J.Harper and Roland F. Chase, *Immigration Laws of the United States* (Indianapolis: The Bobbs-Merrill Company, Inc., 1975); John Higham, *Strangers in the Land, Patterns of American Nativism 1860-1925* (New York: Atheneum, 1965); and President's Commission on Immigration and Naturalization, *Whom We Shall Welcome* (Washington, D.C.: U.S. Government Printing Office, 1953).

2. Act of March 3, 1875, 18 Stat. 477.

3. For a brief discussion of the history of subversive beliefs as a basis for exclusions see "Case Notes," *Fordham Law Review* 40 (1972): 706-713.

4. A discussion of the literacy test and the mood of the United States at this time is found in George M. Stephenson, *A History of American Immigration 1820-1924* (New York: Ginn and Company, 1926), pp. 156-169, and John Higham, *Strangers in the Land*.

5. For a discussion of *Kessler* v. *Strecker*, see *Fordham Law Review*, 40 (1972): 709.

6. Discussion on Internal Security Act based on Charles Gordon, "The Immigration Process and National Security," *Temple Law Quarterly* 24: 305-307 and Jack Wasserman, "The Immigration and Nationality Act of 1952--Our New Alien and Sedition Law," *Temple Law Quarterly*, *passim*.

7. Immigration and Nationality Act, subsection 212(a)(15).

8. Whom We Shall Welcome, p. XI.

9. Ibid., p. 177.

10. Immigration and Nationality Act, subsection 212(a)(33).

11. Sam Bernsen, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp. 48-49.

12. Henry Steiner, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp. 109-111.

13. Dr. Oldrich Kyn, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp.112-115.

14. Lory Rosenberg, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp. 118-121.

15. Deborah Anker, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, Novemer 9, 1979, p. 121.

16. Jeffrey Bihr, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, San Francisco, California, June 9, 1980, pp. 473-476.

17. Charles Brydon, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp. 69-70.

18. Dr. John Speigel, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp. 71-72.

19. David Crosland, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, New York, New York, January 21, 1980, pp. 5-6. As of April 24, 1981, operating instructions had not yet been issued.

20. Leonel J. Castillo, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, p. 74.

21. Stanley Rebulton, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, pp. 74-75.

22. Lucia Valeska, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Boston, Massachusetts, November 9, 1979, p. 78.

23. Barrett Brick, unpublished written statement, pubic hearing before the Select Commission on Immigration and Refugee Policy, New York, New York, January 21, 1980.

24. Those present at the week-long meeting included:

Select Commission Staff and Consultants: Sam Bernsen, Esq.; Peter Schey, Esq.; Peter Levinson, Esq.

Private Sector: Maurice A. Roberts, Esq.; Benjamin Gim, Esq.; Charles Gordon, Esq.; Donald L. Ungar, Esq.

Government Representatives: Jerry Tinker; Garner J. Cline; Arthur P. Endres, Jr.; Alexander Cook; Cornelius D. Scully; Elizabeth J. Harper; Paul Schmidt; Aaron Bodin; Doris Meissner; Mary Jo Grotenrath; Alex Aleinikoff.

Commission Members: The Honorable Hamilton Fish, Jr.; Judge Cruz Reynoso, presiding.

25. See U.S. Immigration Policy and the National Interest, pp. 350 to 352 for the memorandum on exclusions prepared by Commissioner Holtzman.

26. See subsection 212(a)(1)(E) of the Proposed Revision of the Immigration and Nationality Act.

27. Immigration and Nationality Act, subsection 212(a)(3).

28. Immigration and Nationality Act, subsection 212(a)(4).

29. Immigration and Nationality Act, subsection 212(a)(9).

30. For a more detailed discussion, see Proposed Revision of the Immigration and Nationality Act Part I, section 212, p. 24.

31. Immigration and Nationality Act, subsection 212(a)(23)

32. See subsection 212(a)(3) of the Proposed Revision of the Immigration and Nationality Act.

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Papers and other materials of the Select Commission on Immigration and Refugee Policy are in the National Archives, Washington, D.C.

Principal Publications

U.S. Immigration Policy and the National Interest, The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and President of the United States, March 1, 1981.

U.S. Immigration Policy and the National Interest, Staff Report of the Select Commission on Immigration and Refugee Policy, April 30, 1981. Supplement to Final Report.

Note: The appendix volumes to the Staff Report listed below include research contracts, briefing, background and other papers prepared for the Select Commission. These papers are listed in the Commission's Final Report.

Appendix A.	Papers on U.S. Immigration History.
Appendix B.	Papers on International Migration.
Appendix C.	Papers on Refugees.
Appendix D.	Papers on Legal Immigration to the United States.
Appendix E.	Papers on Undocumented/Illegal Migration to the United States.
Appendix F.	Papers on Temporary Worker Programs.
Appendix G.	Papers on the Administration of Immigration Law.
Appendix H.	Public Information Supplement.
Appendix I.	Summary of Commission Recommendations and Votes.

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* Sheila H. Murphy and Philip M. Wharton, compilers.

Other Documents

Proposed Revision of the Immigration and Nationality Act, April 30, 1981, 2 volumes.

Semiannual Report to Congress, March 1980. Reprinted by the Committees on the Judiciary, U.S. Senate and House of Representatives, 96th Cong., 2d sess. Washington, D.C.: Government Printing Office, 1980.

Second Semiannual Report to Congress, October 1980. Reprinted by the Committees on the Judiciary, U.S. Senate and House of Representatives, 96th Cong., 2d sess. Washington, D.C.: Government Printing Office, 1980.

Verbatim transcripts and written testimony submitted at public hearings:

Baltimore, Maryland	October 29, 1979
Boston, Massachusetts	November 19, 1979
Miami, Florida	December 4, 1979
San Antonio, Texas	December 17, 1979
New York, New York	January 21, 1980
Phoenix, Arizona	February 4, 1980
Los Angeles, California	February 5, 1980
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New Orleans, Louisiana	March 24, 1980
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Albany, New York	May 5, 1980
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Commission Brochure. Presents mandate and workplan of Commission.

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